Supreme Court, U.S.
FILED
991678 APR 18 2000
OFFICE OF THE CLERK

No. 99-

IN THE

Supreme Court of the United States

RUTH REEVES, REBECCA BROWN
and TIMOTHY REEVES,

Petitioners,

v.

KENNETH STUMPF, ALAN STUMPF,
MICHAEL V. FRIERDICH, LOUIS I. MUND,
RONALD STANLEY, ARTHUR MORRIS
and RALPH JOHNSON,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

PAUL DOUGLAS BROWN
ANNAMALAI & BROWN
Attorneys for Petitioners
#11 The Pines Court, Suite E
P.O. Box 411723
Creve Coeur, Missouri 63141
(314) 469-0992

159021

Counsel Press LLC
(800) 274-3321 • (800) 359-6859

103pp

QUESTIONS PRESENTED

Where Ruth Reeves, Rebecca Brown, and Timothy Reeves have plead Ten Counts of an Amended Complaint pursuant to violations of 18 U.S.C. §§ 1962(a) and 1962(d) in Counts I, IV, and VII ; and violations of 18 U.S.C. §§ 1962(b) and 1962(d) in Counts II, V, and VIII; and violations of 18 U.S.C. §§ 1962(c) and 1962(d) in Counts III, VI, IX and X; and where allegations of Fraudulent Concealment, Equitable Estoppel, and Equitable Tolling and Speculative damages are plead with allegations of injury to business and property interests:

1. Did the Seventh Circuit err in refusing to apply the doctrines of Fraudulent Concealment, Equitable Estoppel, and Equitable Tolling to toll the limitation period pursuant to review of a Federal Rule of Civil Procedure 12(b)(6) dismissal by the District Court when instead applying a Seventh Circuit Rule that a Plaintiff can plead itself out of Court?

2. Did the Seventh Circuit err because the injury discovery accrual rule was applied when application of the injury occurrence rule would be preferable for the instant RICO action since Plaintiffs plead and argued that damages were speculative and not calculable?

3. Did the Seventh Circuit commit exceptional factual error when finding that Ruth Reeves received a letter when said letter was obviously not sent to Ruth Reeves?

4. Did the Seventh Circuit err in refusing to address Count X of the Amended Complaint by holding that any claim of error toward Count X was waived?

5. Did the Seventh Circuit err in affirming the denial of Standing to Rebecca Brown and Timothy Reeves by the District Court when injury to business and property interests is plead?

6. Did the Seventh Circuit err in affirming the denial of Leave to Amend by District Court?

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Contents	iii
Table of Cited Authorities	vi
Table of Appendices	ix
Opinions Below	1
Statement of Jurisdiction	1
Statutes and Rule Involved	1
Statement of the Case	1
A. Nature of the Case	1
Procedural History	7
Reasons for Granting the Writ	8

I. If Not Reversed By This Honorable Court, The Seventh Circuit's Decision Will Maintain Case Law Precedent That Makes Meaningless The Tolling Rules Of Fraudulent Concealment, Equitable Estoppel, And Equitable Tolling When Documents Are Attached To A Complaint To Plead RICO Actions Including Mail And Wire Fraud And

Contents

Page

Such Precedent Negates A Plaintiff's Absolute Right To A Federal Rule Of Civil Procedure 12(b)(6) Analysis When Considering A Defendant's Motion To Dismiss On Limitation Grounds. 8

A. Legal Standard 8

B. Counts I, II, And III 9

C. Counts IV, V, And VI 15

D. Counts VII, VIII, And IX 19

E. Count X 21

II. If Not Reversed By This Honorable Court, The Seventh Circuit's Decision Will Maintain Case Law Precedent That Grants No Consideration To A Speculative Damages Exception Under The Injury Occurrence Rule Which In The Instant Case Would Be Preferable To The Injury Discovery Rule. 24

III. If Not Reversed By This Honorable Court, The Seventh Circuit's Decision Will Maintain Case Law Precedent That Allows For Obvious And Exceptional Factual Error. 26

Contents

Page

IV. If Not Reversed By This Honorable Court, The Seventh Circuit's Decision Will Maintain Case Law Precedent That Allows For Waiver Of Part Of An Appeal When Clearly The Sole Ground For Appeal Was Raised In The Reeves' Briefs And Exceptional Legal Error Occurred. 26

V. If Not Reversed By This Honorable Court, The Seventh Circuit's Decision Will Maintain Case Law Precedent That Contradicts The Standing Requirements For RICO. 27

VI. If Not Reversed By This Honorable Court, The Seventh Circuit's Decision Will Maintain Case Law Precedent That Is An Abuse Of Discretion When Requesting Leave To Amend. 28

Conclusion 29

TABLE OF CITED AUTHORITIES

Page

Cases:

Agency Holding Corp. v. Malley-Duff & Associates, Inc., 483 U.S. 143 (1987) 8

Banque Worms, S.A. v. Messrs Worm Et Cie, 681 F. Supp. 241 (S.D.N.Y. 1987) 28

City Of Chicago Heights, ILL v. LeBue, 841 F. Supp. 819 (N.D. Ill. 1994) 9, 14, 15, 20, 23, 25

Credit General Ins. Co. v. Midwest Indem. Corp., 916 F. Supp. 766 (N.D. Ill. 1996) 28

Financial Mgt. Serv. v. Sibilsky & Sibilsky, 676 N.E.2d 1297 (Ill. App. 1 Dist. 1985) 14

Firestone v. Galbreath, 976 F.2d 279 (6th Cir. 1992) 28

Frierdich v. C.I.R., 923 F.3d 180 (7th Cir. 1991) 23

Fujiwasa Pharmaceutical v. Kapoor, 115 F.3d 1332 (7th Cir. 1998) 12

Giagnorio v. Emmett C. Torkelson, 292 Ill. App. 3d 318 (Ill. App. 2nd Dist. 1997) 28

Hentosh v. Herman M. Finch University, 167 F.3d 1170 (1999) 12

Cited Authorities

Page

Kauthar SDN BHD v. Sternberg, 149 F.3d 659 (7th Cir. 1998) 9

Klehr v. A.O. Smith Corp., 521 U.S. 179 (1997) 9, 14, 24, 25, 26

Matter Of EDC Inc, 930 F.2d 1275 (7th Cir. 1991) 27

McCool v. Strata Oil Co., 972 F.2d 1452 (7th Cir. 1992) 8, 12, 13

NOW v. Scheidler, 510 U.S. 249 (1994) 27, 28

Perlman v. Zell, 938 F. Supp. 1327 (N.D. Ill. 1996) 13, 15

Rotella v. Wood, 120 S. Ct. 1075, 2000 U.S. Lexis 1537, 145 L. Ed. 2d 1047 (2000) 9, 24

Ruiz v. Stewart Associates Inc., 171 F.R.D. 238 (N.D. Ill. 1997) 18

Walker v. Wallace Auto Sales, 155 F.3d 927 (7th Cir. 1998) 23, 26

Zenith Radio Corp. v. Hazeltine Research Inc., 401 U.S. 321 (1971) 24

Cited Authorities

Page

Statutes:

15 U.S.C. § 15 ..... 1, 24

18 U.S.C. § 1341 ..... 1, 21

18 U.S.C. § 1343 ..... 1, 21

18 U.S.C. § 1962(a) ..... i, 1, 3

18 U.S.C. § 1962(b) ..... i, 1, 3

18 U.S.C. § 1962(c) ..... i, 1, 3, 21, 27

18 U.S.C. § 1962(d) ..... i, 1, 3, 21, 27

28 U.S.C. § 1254(1) 1

Rule:

Federal Rule of Civil Procedure 12(b)(6) .....
..... i, 1, 8, 9, 11, 19, 25

TABLE OF APPENDICES

Page

Appendix A — Order And Judgment Of The United States Court Of Appeals For The Seventh Circuit Dated And Decided January 4, 2000 ..... 1a

Appendix B — Amended Memorandum And Order Of The United States District Court For The Southern District Of Illinois Dated And Filed January 7, 1999 ..... 19a

Appendix C — Second Amended Judgment Of The United States District Court For The Southern District Of Illinois Dated And Filed January 11, 1999 ..... 31a

Appendix D — Order Of The United States Court Of Appeals For The Seventh Circuit Denying Petition For Rehearing Dated February 17, 2000 ..... 33a

Appendix E — Statutes And Rule Involved 35a

Appendix F — Exhibit 3 Attached To Amended Complaint, Letter From Eugene J. Schorb, C.P.A., P.C. To S & S Land Trust Dated February 16, 1987 ..... 46a

Appendix G — Exhibit 4 Attached To Amended Complaint, Mortgage Note Dated October 15, 1987 ..... 52a

Appendices

Page

Appendix H — Exhibit 24 Attached To Amended Complaint, Letter From Traughber, Reitz & Morris, Ltd. To Ruth Reeves Dated March 4, 1993 ..... 56a

Appendix I — Exhibit 25 Attached To Amended Complaint, Letter From Ralph D. Johnson, E.A., ATA To Ruth Reeves Dated February 17, 1993 ..... 58a

Ruth S. Reeves, Rebecca Brown, and Timothy Reeves petition for a writ of certiorari to review the judgment of the Court of Appeals for the Seventh Circuit entered in this case on January 4, 2000.

OPINIONS BELOW

The opinion of the Court of Appeals affirming the ruling of the District Court was entered on January 4, 2000 as an unpublished order, is reported at 2000 U.S. Lexis 416, and is reprinted in the appendix ("App.") to this petition. App. 1a-18a.

The order of the Court of Appeals denying rehearing in this case was entered on February 17, 2000, is reported at 202 F.3d 274, and is reprinted in the appendix to this petition. App. 33a-34a.

The decision of the District Court for the Southern District of Illinois (Herndon, Judge) granting dismissal with prejudice on all Ten Counts of the Amended Complaint filed by Ruth Reeves, Rebecca Brown, and Timothy Reeves and is reprinted in the appendix to this petition. App. 19a-32a.

STATEMENT OF JURISDICTION

The Court of Appeals entered its judgment on January 4, 2000. The petitioner filed a timely request for rehearing, which was denied on February 17, 2000. This Court has jurisdiction to review the judgment of the Court of Appeals under 28 U.S.C. § 1254(1).

STATUTES AND RULE INVOLVED

The statutory provisions at issue are all reprinted in the Appendix to this petition: Federal Rule of Civil Procedure 12(b)(6) at App. 35a-39a, 18 U.S.C. §§ 1962(a), 1962(b), 1962(c), and 1962(d) at App. 40a-41a, 18 U.S.C. §§ 1341 and 1343 at App. 41a-43a, and 15 U.S.C. § 15 at App. 43a-45a.

STATEMENT OF THE CASE

A. Nature of the Case

This case involves allegations pursuant to 18 U.S.C. §§ 1962(a), 1962(b), 1962(c) and 1962(d). App. 40a-41a. The lawsuit arises out of the handling of land sale transactions for

the Reeves family, the affairs of Ruth S. Reeves and the Estate of George Reeves where property and assets are at issue.

George Reeves died in 1979 and Michael V. Frierdich was hired as the attorney for his estate to be probated in Monroe County, Illinois. Attorney Alan Stumpf also worked at this time in 1979 within the office of Michael Frierdich. Until 1987 the probate estate of George Reeves was left open in Monroe County Circuit Court. Michael V. Frierdich also was the attorney for the Reeves' family, Ruth S. Reeves, and the Missouri domestic corporation GRR Investment Inc. Attorneys Arthur Morris, Alan Stumpf, and Ron Stanley were also considered by the Reeves' family to be attorneys that represented them along with Michael Frierdich. Ralph Johnson was the accountant for the Reeves family. Louis Mund was the purported purchaser of the Columbia Golf Course, Land Trust 5048 property, and Lot 7A located in Monroe County and St. Clair County Illinois from GRR Investment Inc. (where Ruth Reeves was the sole shareholder). Kenneth Stumpf was the purported trustee for S & S Land Trust which claims legal title to Land Trusts 4963 and 4838 (consisting of several hundred acres of land in Monroe County, Illinois). The aforesaid individuals were involved in the transaction affecting Ruth S. Reeves, her daughter Rebecca Brown, and grandson Timothy Reeves (collectively known as the Reeves). Suit was filed on May 12, 1998 by the Reeves and after dismissal without prejudice of the first One Count Complaint, then a Ten Count Amended Complaint was filed.

Counts I, II, and III concerned one group of property comprised of Land Trusts 4963 and 4838 located in Monroe County, Illinois. Counts IV, V, and VI concerned one group of property comprised of the Columbia Golf Course, Land Trust 5048, and Lot 7A located in Monroe and St. Clair County, Illinois. Counts VII, VIII, IX, concerned one group of property comprised of the Westpark Center a commercial shopping center located in Monroe County, Illinois. Count X concerned several obscure interstate properties and transactions located in Arkansas, Missouri, Illinois, Nebraska, and California. Counts

I, IV, and VII plead violations of 18 U.S.C. §§ 1962(a) and (d). Counts II, V, and VIII plead violations of 18 U.S.C. §§ 1962(b) and (d). Counts III, VI, IX, and X plead violations of 18 U.S.C. §§ 1962(c) and (d). Also, Counts III, VI, IX, and X are premised on interstate violations of Mail and Wire Fraud.

In July 1981 Land Trusts 4963 and 4838 (several hundred acres of prime real estate near Interstate 255 and the Mississippi River in Monroe County Illinois) were sold to S & S Land Trust by Michael Frierdich. The property was primarily owned by Ruth S. Reeves and the Reeves claim that the sale was unauthorized.[1] Additionally, the Reeves claim that S & S Land Trust is the alter ego of Kenneth and Alan Stumpf. Alan Stumpf is a former attorney for Ruth Reeves and never informed her of the nature of certain transactions. On March 1, 1984 Michael Frierdich assigned a Mortgage Note for supposedly $200,000 from Ruth Reeves to First National Bank In Columbia, Illinois when at least $905,000.73 in principal, plus interest was owed to Ruth Reeves. The Reeves in a parallel state lawsuit have claimed this to be a fraudulent assignment. On May 5-22, 1986 First National Bank in Columbia, Illinois released certain Mortgages to Ruth S. Reeves for the sum one dollar for each release. The Reeves in a parallel state lawsuit have claimed this to be fraudulent releases with forgeries and no knowledge by Ruth S. Reeves. On October 9 and 14, 1987 Michael Frierdich had First National Bank in Columbia release other Mortgages to Ruth Reeves for the sum of one dollar. The Reeves in a parallel state lawsuit have claimed this to be fraudulent releases with forgeries and no knowledge by Ruth S. Reeves. On October 15, 1987 Michael Frierdich and S & S Land Trust secured from the Federal Land Bank of St. Louis a check for $600,221 to pay Ruth Reeves in part for the Land Trusts 4963 and 4838. The Reeves claim this check was never made known to Ruth Reeves, let alone ever paid to her. On October 15 and 30, 1987 another

---

1. All Exhibits referenced in this Petition were attached to the Reeves' Amended Complaint. Exhibits 3, 4, 24 and 25 are included in the Appendix.

Mortgage was given to Ruth Reeves with S & S Land Trust the Mortgagor. Then an assignment of the Mortgage was made to First National Bank of Columbia for the sum of $235,000. Ruth Reeves claims that the funds were never paid to her or she was even aware of the Mortgage. On February 16, 1987 Kenneth Stumpf received a letter from his CPA Keith G. Brinkman where a principal of $905,350.73 plus $654,223.80 in interest would be paid to Ruth S. Reeves through March 1, 1996. None of these funds were paid or received by Ruth Reeves. The Stumpfs claim that certain funds were paid to Michael Frierdich. However, an affidavit of Kenneth Stumpf filed in Federal Court in 1998 swore to paying close to 1.6 Million Dollars for the S & S Land Trust property, but was documented by checks totaling just in excess of $316,000 (approximately a 1.3 million dollar discrepancy). Also, the checks given Michael Frierdich were made out to Ruth Reeves who has sworn in an affidavit that she never received the checks and her signature is forged on the checks. That from 1990 through 1997 the Stumpfs have continued to sell parts of Land Trusts 4963 and 4838 to other parties such as River Lakes Golf Course Inc. in 1997. The Reeves claim that none of these sales were known about until an affidavit was filed in Federal Court by Kenneth Stumpf in 1998 detailing the new transactions. In Counts I and II of the Amended Complaint predicates are plead from October 15, 1987 to August 31, 1998. In Count III predicates are plead from June 30, 1986 to May 1998 in Count III. Many of the above facts are referenced within the predicate acts plead in Counts I, II, III (provided they occurred between October 15, 1987 to August 31, 1998 for Counts I and II or between June 30, 1986 to May 1998 for Count III).

In March 1982 the Columbia Golf Course was sold by Michael Frierdich to Louis Mund. It is claimed by the Reeves that there was no authorization for this sale and the signature of Ruth S. Reeves was forged on the land sale contracts. Also, claimed is there was no authorization for the sale of the golf course by GRR Investment Inc. In April 1982 Land Trust 5048

property adjoining the Columbia Golf Course was sold to Louis I. Mund by Michael Frierdich. This property was primarily owned by Ruth Reeves and the Reeves claim no authorization was ever given for the sale. Further, property known as Lot 7A adjoining the Columbia Golf Course was put in the name of Louis I. Mund in late 1994 without any release from the Reeves' family. Louis Mund claims he is entitled to Lot 7A pursuant to the original sale of the Golf Course and Land Trust 5048. The Reeves claim that the taking of the one group of property comprised of Lot 7A, the Columbia Golf Course, and Land Trust 5048 was unlawful. In Counts IV, V, and VI of the Amended Complaint predicates are plead from March 2, 1986 to August 31, 1998. Many of the above facts are referenced within the predicate acts plead in Counts IV, V, and VI (provided they occurred between March 2, 1986 to August 31, 1998).

On May 15, 1981 through March 2, 1982 Michael V. Frierdich arranged for the sale of the commercial shopping center known as the Westpark Center to Ruth S. Reeves. Then in 1988 the Westpark Center property was sold to Michael Frierdich. Ruth Reeves claims that she never authorized the sale of the property to Michael Frierdich (or his commercial alter egos). In Counts VII, VIII, and IX of the Amended Complaint predicates are plead from March 1981 to August 31, 1998. Many of the above facts are referenced within the predicate acts plead in Counts VII, VIII, and IX (provided they occurred between March 1981 to August 31, 1998).

Before the death of George Reeves the Lennox Hotel (owned by GRR Investment Co. Inc.) in St. Louis, MO was sold for approximately $640,000. It is claimed by the Reeves that any funds subsequently received by the estate were never delivered to Ruth S. Reeves by Michael Frierdich. Then in March 1980 Arkansas Farm Property held by the estate of George Reeves consisting of significant acreage was sold to an individual named Joe T. Glover. It is claimed by the Reeves that the nature and extent of this sale was never made clear to Ruth S. Reeves. She never received any funds from the sale.

Also, Michael Frierdich after the death of George Reeves in 1979 collected funds for the sale of the Mt. Lebanon Cemetery and Guardian Mortuary located in St. Louis, MO on behalf of the Reeves family. Yet, the Reeves claim no funds for the sale have been received. Additionally, after the death of George Reeves, Michael Frierdich collected checks on behalf of the Reeves' family for the sale of dirt to Luhr Bros. Construction located in Monroe County, Illinois. The Reeves claim that they have never received any of the funds. After, the death of George Reeves, Michael Frierdich received funds which were due to Ruth Reeves as owner of New Hope Foundation (Retarded Children's Home) in Monroe County, Illinois. The Reeves claim no funds were received from Michael Frierdich. On April 2, 1981 Michael Frierdich sold property known as Hardy Acres within the Timberlakes subdivision in Waterloo, IL, but Ruth Reeves who owned the property claims to have received no funds from the sale.

On March 15, 1989 Michael Frierdich appeared in U.S. Tax Court claiming a $100,000 loan from Ruth Reeves was not taxable. Also, Frierdich purported to have Ruth Reeves appear on his behalf in the courtroom. The tax court found no loan existed and that Frierdich had $100,000 in taxable attorneys' fees. Also, Ruth Reeves claims that Frierdich had someone pose as her at the Tax Hearing and she had no knowledge about the loan or tax case. Further, in February 1991 Frierdich appeared before the Seventh Circuit Court of Appeals when he appealed the tax decision. Ruth Reeves claims Frierdich never told her about the Seventh Circuit case and she did not find out about it until 1997. In 1991 Michael Frierdich created the Reeves Family Trust for an apartment complex in Carlsbad California. The Reeves family claims that the trust is a sham since the people making up the trust are not actual members of the Reeves family. In Count X of the Amended Complaint predicates are plead from May 1978 to August 31, 1998. Many of the above facts are referenced within the predicate acts plead

in Count X (provided they occurred between May 1978 to August 31, 1998).

PROCEDURAL HISTORY

In 1994 suit was filed by attorney Jack Strellis on behalf of Ruth Reeves against Michael Frierdich in a one Count Mal-Practice action in United States District Court for the Southern District of Illinois (Cause 94-1000-PER). At the time and still to this day Mr. Strellis is the current Law Partner of Attorney Otto Faulbaum who was Michael Frierdich's Law Partner during a substantial part of the transactions referenced above. Eventually, a settlement agreement was set aside by Judge Paul E. Riley due to the fact that the court found Ruth Reeves did not understand what she was signing. Late in 1997, after Mr. Strellis no longer represented Ruth Reeves, Judge Riley granted a Motion To Voluntarily Dismiss Cause 94-1000-PER. Alternatively, the Reeves had requested that leave to Amend be granted to add other parties and causes of action. This would have alleviated any concerns about a limitation period.

On May 12, 1998 the Reeves filed the instant action with a One Count Complaint alleging violations of the Federal RICO statutes. Several days later S & S Land Trust, with Kenneth Stumpf as one of its trustees, filed a State Lawsuit in Monroe County, Illinois Circuit Court (to Quiet Title over Land Trusts 4963 and 4838, Cause 98-MR-12) against Ruth Reeves, Rebecca Brown, and Timothy Reeves. The Reeves removed the State Lawsuit to Federal Court in part claiming it was related to the instant Federal Lawsuit. Subsequently, the State Case (Cause 98-MR-12) was remanded back to the Monroe County Circuit Court and is still pending.

On August 10, 1998 the Reeves had their one Count Complaint dismissed with 21 days leave to file an Amended Complaint. On August 31, 1998 the Amended Complaint was filed by the Reeves. Subsequently, the instant Federal Lawsuit was assigned from Judge Riley to the Honorable Judge David Herndon. In January 1999 the District Court dismissed with prejudice the Reeves Ten Count Amended Complaint on

limitation grounds. App. 19a-32a. The court also found that Ruth S. Reeves had Standing, but that Rebecca Brown and Timothy Reeves did not have Standing. Also, Motions for Sanctions against the Reeves were denied by the court.

The District Court's decision was appealed to the Seventh Circuit Court of Appeals which affirmed the decision of the District Court on January 4, 2000. App. 1a-18a. A Petition for Rehearing filed by the Reeves was denied by the Seventh Circuit on February 17, 2000. Finally, a Petition for a Writ of Certiorari is filed by the Reeves with the instant document.

REASONS FOR GRANTING THE WRIT

I.

IF NOT REVERSED BY THIS HONORABLE COURT, THE SEVENTH CIRCUIT'S DECISION WILL MAINTAIN CASE LAW PRECEDENT THAT MAKES MEANINGLESS THE TOLLING RULES OF FRAUDULENT CONCEALMENT, EQUITABLE ESTOPPEL, AND EQUITABLE TOLLING WHEN DOCUMENTS ARE ATTACHED TO A COMPLAINT TO PLEAD RICO ACTIONS INCLUDING MAIL AND WIRE FRAUD AND SUCH PRECEDENT NEGATES A PLAINTIFF'S ABSOLUTE RIGHT TO A FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6) ANALYSIS WHEN CONSIDERING A DEFENDANT'S MOTION TO DISMISS ON LIMITATION GROUNDS.

A. Legal Standard

There is no dispute that the four year Rico Statute of Limitation is applicable in the instant case. *Agency Holding Corp. v. Malley-Duff & Associates, Inc.*, 483 U.S. 143, 156-157 (1987). Additionally, no dispute exists that the Seventh Circuit has adopted the separate injury discovery accrual rule where the four year limitation period runs from when a Plaintiff knew or reasonably should have known of their injury resulting from the act of a Defendant. *McCool v. Strata Oil Co.*, 972 F.2d 1452, 1464-1465 (7th Cir. 1992). This rule was further held to be acceptable by this Court and the injury and pattern discovery

rule held to be unsound. *Rotella v. Wood*, 120 S. Ct. 1075, 2000 U.S. Lexis 1537, 1, 11-22, 145 L. Ed. 2d 1047 (2000). Also, held by this Court is that the injury occurrence rule is still open for consideration under RICO. *Rotella* at 2000 U.S. Lexis 1537, 1, 11. A 12(b)(6) dismissal is subject to de novo review.

In *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 194 (1997) this Court held that to toll the Statute of Limitations under RICO through Fraudulent Concealment or other Equitable Tolling a Plaintiff must exercise due diligence in the investigation of his or her claim. These are the rules that govern the limitation period. The instant case is extremely important and distinguishable from the cases cited. First, there were extensive allegations within each Count of the Amended Complaint as to Fraudulent Concealment, Equitable Estoppel, and Equitable Tolling. Second, there were extensive allegations of Due Diligence in each Count of the Amended Complaint. Third, the facts plead and Exhibits attached to the Amended Complaint demonstrated due diligence and not an indisputable awareness by Ruth Reeves. Fourth, in a 12(b)(6) motion to dismiss the court takes all well-pleaded allegations as true, including tolling allegations. *City Of Chicago Heights, ILL v. LeBue*, 841 F. Supp. 819, 823 (N.D. Ill. 1994).

B. Counts I, II, And III

The Seventh Circuit held in the instant case that the Complaint alleged too many facts. The allegations and exhibits according to the court made clear that with the exercise of due diligence she should have known of her alleged claims more than four years before she filed suit. App. 14a. *See Kauthar SDN BHD v. Sternberg*, 149 F.3d 659, 670 (7th Cir. 1998). Unequivocally, the court held that the Reeves plead themselves out of a Rule 12(b)(6) analysis.

Specifically, in Counts I, II and III there are allegations of Fraudulent Concealment, Equitable Estoppel, Equitable Tolling, Plaintiffs' Due Diligence and Speculative Damages. For example in Count III paragraph 15 of the Amended Complaint the foregoing is clearly plead:

The predicate acts arise from a common nucleus of operative facts that would have accrued at the earliest March 1, 1996 since by Plaintiffs' perception the documents drafted and acted upon by the Defendants are ambiguous and the March 1, 1996 deadline for payment is listed in Exhibit 3. Additionally, Plaintiffs, despite due diligence, only now could have discovered the single injury (unlawful conversion of property and income from Trusts 4963 and 4838), since plaintiffs did not know that certain parts of Trusts 4963 and 4838 had been sold until page four Kenneth Stumpf's affidavit dated on August 7, 1998 disclosed the sales of various properties, (See Exhibit 7). Further, the Defendants have fraudulently concealed many transactions since the Plaintiffs were never informed by said Defendants of transactions for property sold or easements granted, transaction dates, funds paid, and resulting enterprises invested in by the Defendants from funds received. Also, the Defendants named in this Count have prevented the Plaintiffs from gaining information that Plaintiffs' injury was caused by the wrongdoing of said Defendants. The Defendants Michael Frierdich, Alan E. Stumpf, Kenneth W. Stumpf, Ralph D. Johnson and Arthur Morris purposely withheld from the Plaintiffs information as to the whereabouts of funds unlawfully converted by Michael Frierdich, the amount of property sold, the lack of authorization for property sold, and specifically Plaintiffs were never advised by the Defendants Michael Frierdich, Arthur Morris, and Alan E. Stumpf that they were representing S&S Land Trust (Kenneth and Alan Stumpf's alter ego) at the same time they were representing the Reeves' family. Plaintiffs did not move back to Illinois from Florida and New Jersey

> until September 1994. As such Plaintiffs claim (1) the Statute of Limitations would not have started to run until March 1, 1996 (See Exhibit 3), (2) Plaintiffs have met the elements necessary to toll the Statute of Limitations, if necessary (fraudulent concealment and due diligence) and (3) the Plaintiffs have met the elements for equitable estoppel, if necessary, since the Defendants prevented the Plaintiffs from knowing the Defendants' wrongdoing and **Plaintiffs have been prevented from have been prevented from filing RICO actions against the instant Defendants by some of the Defendants acting as Plaintiffs' attorney and accountant well into 1995.**

The Seventh Circuit makes the determination that the injuries alleged in Counts I, II, and III of Plaintiffs' Amended Complaint should have been discovered no later than September 17, 1992. App. 7a. In part this finding is made pursuant to Ruth Reeves' allegation that the Defendants fraudulently informed her that the mortgages on the lands in question were fully paid on September 17, 1992 when she received $205,128.76. This legal conclusion and analysis is clearly erroneous when reviewing a 12(b)(6) Motion To Dismiss. First, it is undisputed that Ruth Reeves was never told the nature of the transaction or could reasonably be expected as an elderly widow to realize the attorneys she trusted were completing the liquidation of her property and assets. The Seventh Circuit held that the Reeves' allegations for Fraudulent Concealment and Equitable Estoppel did not contemplate wrongdoing above and beyond the wrongdoing upon which the Plaintiffs' claims were founded. Also, the Seventh Circuit asserted that Ruth Reeves' had detailed information about the property transfers and her allegations of not receiving funds made it unreasonable to wait until 1998 to file suit. App. 12a. Further, the Seventh Circuit held that the granting of Equitable Estoppel should be premised on a defendant's improper conduct as well as a plaintiff's actual

reliance thereon. The court went on to hold that the Defendants' alleged improper conduct went no further than the fraud alleged and any reliance by Ruth Reeves was unreasonable in relying on letters which stated that transfers had occurred. App. 12a. *See Hentosh v. Herman M. Finch University*, 167 F.3d 1170, 1174 (1999). Allegations beyond the predicates of the Defendants were clearly plead. In part the following is stated from Paragraph 15 of Count III:

> **Plaintiffs were never advised by the Defendants Michael Frierdich, Arthur Morris and Alan E. Stumpf that they were representing S&S Land Trust (Kenneth and Alan Stumpfs' alter ego) at the same time they were representing the Reeves' family.**

Plead are further allegations that Plaintiffs were prevented from bringing a RICO action in Paragraph 15 of Count III:

> **Defendants prevented the Plaintiffs from knowing the Defendants' wrongdoing and Plaintiffs have been prevented from filing RICO actions against the instant Defendants by some of the Defendants acting as Plaintiffs' attorney and accountant well into 1995.**

It is undisputed that Ruth Reeves relied upon the Defendants as her attorneys and accountant. Ruth Reeves was and still is an elderly widow that trusted her attorneys.

In *McCool v. Strata Oil Co.*, 972 F.2d 1452, 1461 (7th Cir. 1992) active concealment was clearly defined. It was held that the invocation of this equitable doctrine has fairly stringent requirements, but is available to a Plaintiff where the Plaintiff alleges the Defendants had responded to requests for information by evasion and prevarication. Evasive disclosures were made to Ruth Reeves upon inquiries about her property.

In *Fujiwasa Pharmaceutical v. Kapoor*, 115 F.3d 1332, 1338 (7th Cir. 1998) the Seventh Circuit stated "In this circuit, in a case such as this in which the predicate acts are fraud, it runs from the discovery of injuries but can be tolled until the

Plaintiff has enough information to sue." Additionally, in *Perlman v. Zell*, 938 F. Supp. 1327,1334-1335 (N.D. Ill. 1996) it was held:

> Even after the limitations period begins to run, it may be stopped under circumstances amounting to either equitable estoppel or equitable tolling. Equitable estoppel may exist where the defendant takes active steps to prevent the Plaintiff from suing in time, such as by promising not to raise the statute of limitations as a defense. Equitable tolling, a separate concept, may apply where the plaintiff is prevented from gaining information that would indicate that the injury was caused by wrongdoing of the defendant.

The requisite allegations are clearly plead for each of the tolling exceptions to the limitation period as quoted above. In *McCool v. Strata Oil Co.*, 972 F.2d 1452, 1463 (7th Cir. 1992) the Seventh Circuit held that ambiguous statements in a first agreement signed by investors would not reasonably alert them to possible fraud. In comparison Exhibits 3 and 4 attached to the Amended Complaint show a direct contractual relationship with Ruth S. Reeves, but Exhibit 3 has a pay-off date of March 1, 1996 and Exhibit 4 has a pay-off date of March 1, 1994. App. 46a-55a. The ruling of the Seventh Circuit is not consistent since an elderly widow who trusts her attorney certainly deserves as much consideration as someone under a reasonable investor standard.

The court in reference to Exhibit 3 (a February 1987 letter to Kenneth Stumpf at S & S Land) held that should have put Plaintiff Ruth Reeves on notice of her injury. App. 46a-51a. This is a letter that the court clearly relies upon as informing Ruth Reeves that payments were due her under contract beginning on March 1, 1987. The court's analysis assumes Ruth Reeves saw the letter before September 1994 and appears to assume the letter is to Ruth Reeves. App. 7a-8a. First, the letter is addressed to S&S Land Trust (alter ego of Kenneth and Alan

Stumpf). Second there is no evidence or will there be that Ruth Reeves saw this letter before September 1994. Without the letter Ruth Reeves clearly could not have been put on Notice.

In *Klehr v. A.O. Smith*, 521 U.S. 179, 193 (1997) this Court clearly held that no fact based question will be considered within the scope of a writ unless there is a reason to believe that an obvious and exceptional occurred below. Any cursory reading of Exhibit 3 shows the letter was from a CPA named Keith G. Brinkman to S & S Land Trust (the alter ego of Alan and Kenneth Stumpf). Besides, being a huge factual mistake this is also a legal mistake since the Seventh Circuit did not view this document in a light most favorable to the Plaintiff. This legal mistake continued with other Exhibits.

The Seventh Circuit found Exhibit 8 a September 29, 1997 letter from Michael Frierdich to Ruth Reeves as a basis for Notice when in fact the letter does not reference exactly what lands are sold or the purpose for the purported mortgages. Also, the court appears to reference Exhibit 11 a October 1991 letter from Michael Frierdich to Ruth Reeves. App. 5a-7a. This letter references land being sold to Kenneth Stumpf, but does not establish any notice of a RICO injury. Further, the court references Exhibit 6 a Statement of Financial Position which listed the Land Trusts as receivables as giving Notice. This statement was prepared by the Defendant Ralph Johnson and certainly he never explained the significance of any of these documents to Ruth Reeves. There are clearly more than one set of conceivable facts that should be taken as true to toll the limitation period, especially when taken in a light most favorable to a Plaintiff. *See City Of Chicago Heights, ILL v. Lebue*, 841 F. Supp. 819, 823 (N.D. Ill. 1994).

Finally, the court's Order is importantly silent as to Exhibit 4 which is a Mortgage Note that has an irrevocable Confession of Judgment Clause which are enforceable under Illinois Law. App. 53a-54a. *See Financial Mgt. Serv. v. Sibilsky & Sibilsky*, 676 N.E.2d 1297, 1304-1305 (Ill. App. 1 Dist. 1985). Exhibit 4 clearly references Ruth Reeves as the Seller, despite this

document not being discovered by the Plaintiffs until after September 1994. Exhibit 4 also is signed by Kenneth Stumpf and prepared by Frierdich and Morris. At the very least the irrevocable confession of judgment clause is a promise not to enforce a limitation period. A promise not to raise a statute of limitation defense has been held to equitably estop the running of a limitation period by District Courts within the Seventh Circuit. See *Perlman v. Zell*, 938 F. Supp. 1327, 1334-1335 (N.D. Ill. 1996). Also, the Seventh Circuit inadvertently ruled that predicates plead after May 12, 1994 were also dismissed with prejudice. App. 8a. There is nothing in the recent Supreme Court decisions to suggest that predicates occurring within four years of filing suit are also dismissed. This occurred in regard to every Count of the Ten Count Amended Complaint. Specifically, plead in Counts I, II, III is that, with the filing of an affidavit by Kenneth Stumpf in 1998, other conduct became known by the Plaintiffs (including the selling or leasing of property, post 1994). Granted the Reeves have plead a single continuous injury theory in part to preserve a speculative damages exception under a Clayton Act model. However, predicates plead after May 12, 1994 shouldn't be dismissed. For the foregoing reasons the Petition for a Writ of Certiorari should be granted and the maintaining of the precedent left by the Seventh Circuit clearly reversed upon Briefing and Oral Argument.

C. Counts IV, V, And VI

Counts IV, V, and VI pertain to one group of property comprised of the Columbia Golf Course, Land Trust 5048, and Lot 7A located in St. Clair and Monroe County, Illinois. Applying the same legal analysis under the rules of Fraudulent Concealment, Equitable Estoppel, and Equitable Tolling there are clearly allegations which read in a light most favorable to the Reeves establish the RICO actions should have been tolled in Counts IV, V, and VI. *City Of Chicago Heights, ILL v. Lebue*, 841 F. Supp. 819, 823 (N.D. Ill. 1994). In Paragraph 12(c) of Count VI the following is plead:

The predicate acts arise from a common nucleus of operative facts that would have accrued at the earliest November 2, 1994 when (1) Plaintiffs' inquiry into Lot 7A was answered by Frank Eversman, President Of Tempo Bank, (2) Plaintiffs' perception of the documents drafted and acted upon by the Defendants are ambiguous and most of the documents were not obtained by the Plaintiffs until September 1994 when they moved to Columbia, IL., (3) the Plaintiffs, despite due diligence, only now could have discovered the single injury (unlawful conversion of property and income from the one area of land comprised of the Columbia Golf Course, Land Trust 5048, and Lot 7A). (4) the Defendants have fraudulently concealed many transactions since the Plaintiffs were never informed by said Defendants of transactions for property sold or where the income from the sale of the property went until it was revealed that the Defendants invested income in various enterprises from funds received, (5) also, the Defendants named in this Count have prevented the Plaintiffs from gaining information that Plaintiffs' injury was caused by the wrongdoing of said Defendants, and (6) the Defendants Michael Frierdich, Arthur Morris, Louis Mund, Ronald Stanley, and Ralph D. Johnson and Arthur Morris purposely withheld from the Plaintiffs information as to the whereabouts of funds unlawfully converted by Michael Frierdich, the amount of property sold, the lack of authorization for property sold, and specifically Plaintiffs were never advised by the Defendants Michael Frierdich and Arthur Morris that they were representing Louis Mund and Ronald Stanley at the same time they were representing the Reeves' family in transactions related to the Columbia Golf Course, Land Trust 5048, and Lot 7A.

The elements and facts for Fraudulent Concealment, Equitable Estoppel, and Equitable Tolling are clearly plead. Due diligence is also plead as required. Speculative Damages were also argued and plead by the Reeves. Paragraphs 12(C) in Counts IV and V are similarly plead and establish the requisite exceptions to the limitation period. Further, there are two main sales contracts involved. One contract for the Columbia Golf Course and one for Land Trust 5048. These were attached as Exhibit 15 and 18 to the Amended Complaint. Overlooked by the Seventh Circuit and even the District Court was the simultaneous relationship between the purchase of the Columbia Golf Course and Land Trust 5048. In Paragraph 7 of Exhibit 18 (the contract for the land trust 5048 purchase) the following is stated:

> Simultaneously with the signing of this Agreement, the purchaser will be executing a Purchase Agreement wherein he will be purchasing the Columbia Golf Course from G.R.R. Investments Co., Inc for a total consideration of $1,000,000 upon the terms and conditions set forth in the said Purchase Agreement, a copy of which is attached hereto and marked as Exhibit "C". The parties hereto agree that if the purchaser fails to make the payments as called for in the said Purchase Agreement herein marked as Exhibit "C" and the unpaid principal balance therein is in excess of $500,000.00, this present agreement shall be considered in default and Seller may terminate this agreement and retain all payments made hereon as liquidated damages. If Seller elects to terminate this Agreement, Purchaser shall relinquish possession of the real estate and return it to sellers.

Reeves plead that no funds were received for the sale of the Columbia Golf Course, Land Trust 5048, and Lot 7A. Additionally, Plaintiffs have raised that their were forged signatures. This fact is noted by the Seventh Circuit. App. 9a.

Other correspondences from the Defendants established that Lot 7A was by their perception tied into the original transaction for Land Trust 5048 and the Columbia Golf Course. Specifically, the Seventh Circuit found a March 4, 1993 letter (Exhibit 24) from Arthur Morris which referenced Lot 7A and Land Trust 5048 to have put Ruth Reeves on Notice of her injury. App. 8a-9a. First, it is undisputed that Morris was an attorney for Ruth Reeves during a substantial part of the transactions. Second, a conflict of interest existed since Morris openly admitted in the letter to representing Louis Mund and Ronald Stanley (who at one time claimed joint ownership of the property in question). App. 56a-57a. By the perception of the Reeves family Michael Frierdich was their attorney and any questions would have been referred to him. Ruth was an elderly widow living out of state and unaware of any wrongdoing. In 1994 suit was filed against Michael Frierdich on behalf of Ruth Reeves in a One Count Mal-Practice action by attorney Jack Strellis who was and still is the Law Partner of Otto Faulbaum. Otto Faulbaum is the former Law Partner of Michael Frierdich and this fact was never disclosed to the Reeves. The Reeves returned to the Columbia, Illinois area in late 1994 to further investigate the instant matters. This shows due diligence and reasonable reliance by the Reeves on the explanations of the attorneys involved in every aspect of the timeline. Also, the legal action plead by Strellis in no respect assisted in discovering a RICO injury. In *Ruiz v. Stewart Associates Inc.*, 171 F.R.D. 238, 241 (N.D. Ill. 1997) the court held "Plaintiffs persuasively argue that the charges (injury) were fraudulently concealed therefore, they may have not even discovered their injury until they consulted an attorney approximately in 1995."

Finally, Ruth Reeves as an out of state elderly widow could not reasonably be expected to understand the import of the letter from Morris. Any cursory reading shows that Morris references documents in the letter that Ruth Reeves did not discover until September 1994 or later. The Seventh Circuit holds that it is a mere inconvenience for Ruth Reeves to live out of state and

that she should have discovered her injury within four years of the letter from Morris. Yet, in a light most favorable to a Plaintiff under a 12(b)(6) analysis the tolling allegations should have prevented dismissal. For the foregoing reasons the Petition for a Writ of Certiorari should be granted and the maintaining of the precedent left by the Seventh Circuit clearly reversed upon Briefing and Oral Argument.

D. Counts VII, VIII, And IX

Counts VII, VIII, and IX concerned the unauthorized sale of Westpark Center a commercial shopping center located in Monroe County, Illinois. The Seventh Circuit held that Ruth Reeves should have sued within four years of May 15, 1992. App. 10a. A warranty deed under which Ruth owned the property was said to have declared that she would receive the deed for the property in May 1992. It was held that Ruth Reeves by not receiving a deed in May 1992 was put on Notice. Yet, proper allegations for Fraudulent Concealment, Equitable Estoppel, and Equitable Tolling, Reasonable Due Diligence, and Speculative Damages were plead. For example Paragraph 11(C) in Count IX states the following:

> The predicate acts arise from a common nucleus of operative facts that would have accrued at the earliest September 1994 when: (1) Plaintiffs' moved back to Columbia, Illinois from Florida and New Jersey which the Defendants named in this Count took full advantage of when defrauding the Plaintiffs; (2) Plaintiffs' perception of the documents drafted and acted upon by the Defendants are ambiguous and most of the documents were not obtained by the Plaintiffs until September 1994 when they moved to Columbia, IL.; (3) the Plaintiffs, despite due diligence, only now could have discovered the single injury (unlawful conversion of property and income from the one area of land comprised of the Westpark Centre), (4) the Defendants have fraudulently concealed many transactions since the Plaintiffs

> were never informed by said Defendants of transactions for property sold or where the income from the sale of the property went until it was revealed that the Defendants invested income in various enterprises from funds received, (5) the Defendants named in this Count have prevented the Plaintiffs from gaining information that Plaintiffs' injury was caused by the wrongdoing of said Defendants and (6) the Defendants Michael Frierdich, Arthur Morris, Kenneth Stumpf, Ralph D. Johnson purposely withheld from the Plaintiffs information as to the whereabouts of funds unlawfully converted by Michael Frierdich, the amount of property sold, the lack of authorization for property sold, and specifically Plaintiffs were never advised by the Defendants Michael Frierdich and Arthur Morris that they were representing Kenneth Stumpf at the same time they were representing the Reeves' family.

Similar allegations are plead in Counts VII and VIII of the Amended Complaint. Applying the same legal analysis under the rules of Fraudulent Concealment, Equitable Estoppel, and Equitable Tolling there are clearly allegations which read in a light most favorable to the Reeves establish the RICO actions should have been tolled in Counts VII, VIII, and IX. *City Of Chicago Heights, ILL v. Lebue*, 841 F. Supp. 819, 823 (N.D. Ill. 1994).

Here, the court has overlooked that the warranty deed for the original transaction was never shown to the Reeves. As clearly plead in part by the Plaintiffs is **"the documents were not obtained by the Plaintiffs until September 1994 when they moved back to Columbia, IL." Also, publicly recorded deeds referenced by the court were filed or drafted by the Defendant Frierdich.** None of these Exhibits as plead were discovered by the Plaintiffs until after September 1994. Frierdich disguised the sale of Westpark Centre to Ruth Reeves and then

attempted to sell the property back to himself using estate funds or Ruth's personal funds in all the transactions. **None of these facts could be known by the Reeves' family until after September 1994 as plead.** As such all the exceptions to the Rico Statute of Limitation already articulated would be applicable to Counts VII, VIII, and IX. There was reasonable due diligence exercised by the Reeves and the tolling allegations are plead beyond the wrongdoing of the predicate acts. Also, as plead and argued damages were speculative. For the foregoing reasons the Petition for a Writ of Certiorari should be granted and the maintaining of the precedent left by the Seventh Circuit clearly reversed upon Briefing and Oral Argument.

E. Count X

Count X concerns several obscure and distant properties in Missouri, Illinois, Arkansas, Nebraska, and California. Specifically, plead were several violations of Mail and Wire Fraud in a scheme to defraud the Reeves. This was clearly referenced in pleadings filed with the Seventh Circuit with violations of 18 U.S.C. §§ 1962(c) and (d). The applicable Mail and Wire Fraud statutes were also referenced within Count X of the Amended Complaint. *See* 18 U.S.C. §§ 1341 and 1343, App. 41a-43a. Later in this Petition the Seventh Circuit's holding that the Reeves waived their argument as to Count X will be addressed. The District Court in regard to Count X found that Ruth Reeves should have been aware of her injuries pursuant to her remark "something rotten in Denmark" as referenced in a letter from Ralph Johnson the Reeves' family accountant. The letter was attached as Exhibit 25 to the Amended Complaint and demonstrated due diligence on the part of Ruth Reeves. App. 58a-62a. In the letter Johnson promised to investigate Ruth's concerns. Additionally, phone calls to Ralph Johnson show that the Reeves still trusted Johnson to investigate the actions of Frierdich. Phone records were attached to the Amended Complaint which clearly show the conversations with Johnson took place in late 1994. Johnson was supposed to investigate Frierdich, instead he conspired with Frierdich to gut

the entire estate. Remarkably, the District Court made no determination on specific allegations of Fraudulent Concealment, Equitable Estoppel, Equitable Tolling and Due Diligence. Specifically, in Paragraph 18(c) of Count X the following is plead:

> The predicate acts arise from a common nucleus of operative facts that further prove continuity — (1) the cause of action at the earliest accrued on September 1994 when Plaintiffs moved back to Columbia, Illinois from Florida and New Jersey, 1(2) the Defendants named in this Count took full advantage of the Plaintiffs' situation by defrauding the Plaintiffs, (3) Plaintiffs' perception of the documents drafted and acted upon by the Defendants are ambiguous and most of the documents were not obtained by the Plaintiffs until September 1994 when they moved to Columbia, IL., (4) the Plaintiffs, despite due diligence, only now could have discovered the single injury (unlawful conversion of the multi-state properties and funds), (5) the Defendants have fraudulently concealed many transactions for property sold or where the income from the sale of the property went until it was revealed that the Defendants invested income in various enterprises from funds received, (6) the Defendants named in this Count have prevented the Plaintiffs from gaining information that Plaintiffs' injury was caused by the wrongdoing of said Defendants, (7) the Defendants Michael Frierdich, Arthur Morris, Alan E. Stumpf, and Ralph D. Johnson purposely withheld from the Plaintiffs information as to the whereabouts of funds and property unlawfully converted by the Defendant Michael Frierdich, and (8) Plaintiffs were never advised by the Defendants Michael Frierdich, Arthur Morris, and Alan E. Stumpf (Plaintiffs' former

attorneys) and Ralph D. Johnson (Plaintiffs' former CPA) that they were representing adverse parties during the predicate acts articulated in this Count.

Applying the same legal analysis under the rules of Fraudulent Concealment, Equitable Estoppel, and Equitable Tolling there are clearly allegations which read in a light most favorable to the Reeves establish the RICO actions should have been tolled in Count X. *City Of Chicago Heights, ILL v. Lebue*, 841 F. Supp. 819, 823 (N.D. Ill. 1994). Also, this Court will want to look at *Frierdich v. C.I.R.*, 923 F.3d 180 (7th Cir. 1991) where Michael Frierdich appeared before the Seventh Circuit Court of Appeals to contest an IRS finding that he owed tax on $100,000 in attorneys' fees supposedly received from Ruth Reeves. Frierdich claimed it was a loan from Ruth Reeves. The Seventh Circuit found the money to be taxable income. The hiding of the IRS tax decision and the existence of the Seventh Circuit case are plead as predicates in Count X. Ruth Reeves never knew about these events until after September 1994 for the IRS decision and not until 1997 for the Seventh Circuit decision. Simply put she also had no idea that $100,000 had gone to Frierdich for any purpose. Significant acts of Mail and Wire Fraud are plead with the predicates throughout Count X. Any cursory reading of the Reeves' Briefs will show that the issue of tolling the RICO limitation period was thoroughly addressed by the Reeves as to Count X. The Seventh Circuit has even held that the sole ground for Appeal is all that needs to be addressed. *Walker v. Wallace Auto Sales*, 155 F.3d 927, 936 (7th Cir. 1998). For the foregoing reasons the Petition for a Writ of Certiorari should be granted and the maintaining of the precedent left by the Seventh Circuit clearly reversed upon Briefing and Oral Argument.

II.

IF NOT REVERSED BY THIS HONORABLE COURT, THE SEVENTH CIRCUIT'S DECISION WILL MAINTAIN CASE LAW PRECEDENT THAT GRANTS NO CONSIDERATION TO A SPECULATIVE DAMAGES EXCEPTION UNDER THE INJURY OCCURRENCE RULE WHICH IN THE INSTANT CASE WOULD BE PREFERABLE TO THE INJURY DISCOVERY RULE.

In *Rotella v. Wood*, 120 S. Ct. 1075, 2000 U.S. Lexis 1537, 1, 11-12 (2000) this Court held that the Injury Discovery Rule was acceptable, but eliminated the Injury and Pattern Discovery Rule. Also, this Court left open the possibility of consideration of the Injury Occurrence Rule which is modeled directly after the Clayton Act. In Counts I through X the Reeves have plead and argued that the damages were speculative and incalculable before May 12, 1994. Several properties and assets worth significant amounts of money have been hard to trace due to complicated and vast fraud. This Court in *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 190-191 (1997) cited to *Zenith Radio Corp. v. Hazeltine Research Inc.*, 401 U.S. 321, 339-340 (1971) which exemplifies where speculative damages might deter the limitation period from running under the Clayton Act.[2] (which is analogous to RICO). There is language within the *Klehr* decision to suggest that a theory of one single continuous injury or continuous violation with speculative damages can be considered. The Reeves submit that if this exception is applied it is better law to have one accrual rule and one exception where damages can be plead to be speculative and unprovable. Also, this Court could narrow the exception to only cases where a sophisticated group of Defendants such as Attorneys knowingly conceal material facts from the Plaintiffs. Here, the Defendants camouflaged any possibility of **ascertaining** damages until well within four years of suit being filed. In *Rotella v. Wood*, 120 S. Ct. 1075, 2000 U.S. Lexis 1537, 1, 16-17 (2000) this

---

2. Like RICO the Clayton Act has treble damages. *See* 15 U.S.C. § 15, App. 43a-45a.

Court clearly said **"The object of civil RICO is thus not merely to compensate victims but to turn them into prosecutors, private attorneys general, dedicated to eliminating racketeering activity."** Respectfully, if this Court is wanting private victims to prosecute wrongdoers then the rules of engagement need to be clearly defined. The Reeves submit that the Injury Occurrence Rule is preferable to the Injury Discovery Rule when considering Speculative Damages. Justice Scalia in his concurrence stated in the *Klehr* decision:

> **I would resolve the Circuit split we granted certiorari to consider, and would hold that of the four main accrual rules (injury, injury discovery, injury and pattern discovery, and last predicate act), the appropriate accrual rule is the Clayton Act "injury" rule-the cause of action accrues and the statute begins to run when a defendant commits an act that injures a plaintiff's business.**

Klehr at 198.

Private litigants need guidance on this issue. The Seventh Circuit is all over the road map in its decision. First, it finds that under the Injury Discovery Rule or the now rejected Injury and Pattern Discovery Rule that the Reeves have no claim. App. 4a. Second, it finds that any alleged damages were specific and calculable, yet clearly states that the damages were **"albeit complicated to calculate."** App. 13a. Third, it fails to explain (in a light most favorable to the Reeves) how the allegations within and the documents attached to the Amended Complaint legally show that damages were specifically calculable before May 12, 1994. This is a clear legal error since once again the pleading standard under Federal Rule 12(b)(6) is ignored. *City Of Chicago Heights, ILL v. Lebue*, 841 F. Supp. 819, 823 (N.D. Ill. 1994). For the foregoing reasons the Petition for a Writ of Certiorari should be granted and the maintaining of the precedent left by the Seventh Circuit clearly reversed upon Briefing and Oral Argument.

III.

IF NOT REVERSED BY THIS HONORABLE COURT, THE SEVENTH CIRCUIT'S DECISION WILL MAINTAIN CASE LAW PRECEDENT THAT ALLOWS FOR OBVIOUS AND EXCEPTIONAL FACTUAL ERROR.

As previously stated in this Petition in *Klehr v. A.O. Smith*, 521 U.S. 179, 193 (1997) this Court held that no fact based question will be considered within the scope of a writ unless there is a reason to believe that an obvious and exceptional occurred below. Exhibit 3 attached to the Reeves' Amended Complaint was a letter from a CPA named Keith G. Brinkman to S & S Land Trust. App. 46a-51a. The entire dismissal of Counts I, II, and III was pursuant to the factual finding that Ruth Reeves was put on notice by the letter. App. 7a-8a. Yet, the letter was never sent to Ruth Reeves, let alone seen until after September 1994 by Ruth Reeves. This is an obvious and exceptional error by a United States Court of Appeals. To let this stand would lower the bar as to what is acceptable when deciding a factual matter that affects a tolling rule that could have allowed the Reeves to proceed with their lawsuit. For the foregoing reasons the Petition for a Writ of Certiorari should be granted and the maintaining of the precedent left by the Seventh Circuit clearly reversed upon Briefing and Oral Argument.

IV.

IF NOT REVERSED BY THIS HONORABLE COURT, THE SEVENTH CIRCUIT'S DECISION WILL MAINTAIN CASE LAW PRECEDENT THAT ALLOWS FOR WAIVER OF PART OF AN APPEAL WHEN CLEARLY THE SOLE GROUND FOR APPEAL WAS RAISED IN THE REEVES' BRIEFS AND EXCEPTIONAL LEGAL ERROR OCCURRED.

The Seventh Circuit has even held that the sole ground for Appeal is all that needs to be addressed. *Walker v. Wallace Auto Sales*, 155 F.3d 927, 936 (7th Cir. 1998). Yet, in the instant case

the Seventh Circuit found that the claim of error as to Count X had been waived. The sole grounds for appeal were the limitation and standing issues for Count X. As cited earlier the requisite tolling allegations were plead for Fraudulent Concealment, Equitable Estoppel, Equitable Tolling, Reasonable Due Diligence, and Speculative Damages. Also, allegations for Standing were plead. In the Reeves' Briefs violations of 18 U.S.C. §§ 1962(c) and (d) and Mail and Wire Fraud were presented for Count X. No argument was waived. For the foregoing reasons the Petition for a Writ of Certiorari should be granted and the maintaining of the precedent left by the Seventh Circuit clearly reversed upon Briefing and Oral Argument.

V.

IF NOT REVERSED BY THIS HONORABLE COURT, THE SEVENTH CIRCUIT'S DECISION WILL MAINTAIN CASE LAW PRECEDENT THAT CONTRADICTS THE STANDING REQUIREMENTS FOR RICO.

The Seventh Circuit denied Standing to Timothy Reeves and Rebecca Brown. App. 14a-15a. Yet, injury to business and property interests were plead in each Count. *NOW v. Scheidler*, 510 U.S. 249, 256 (1994). Specifically, there were plead several examples that established Standing. (*i.e.*, assignment by Ruth Reeves, third-party contract beneficiaries, will beneficiaries, and the intent of Defendants' actions to harm not only Ruth Reeves but Rebecca Brown and Timothy Reeves). On the assignment alone from Ruth Reeves Standing should be proper since the Seventh Circuit held **"Ruth's purported assignment to Tim and Rebecca gets them nowhere because the assignment was not made until August 1998, after the statute of limitations had run."** In a nutshell if this Court finds that the limitation period had not run then Standing must granted on the assignment alone. In *Matter Of EDC Inc*, 930 F.2d 1275, 1279 (7th Cir. 1991) the court held that **one can be an intended victim without being a primary victim under RICO. Also, courts**

have held that "A Plaintiff who lacks privity with an attorney's client can still maintain a suit under special circumstances namely an allegation of fraud, bad faith, collusion, or other malicious conduct." *Firestone v. Galbreath*, 976 F.2d 279, 287 (6th Cir. 1992). Under Illinois Common Law a contingent beneficiary to a trust was found to have standing in a recent case. *Giagnorio v. Emmett C. Torkelson*, 292 Ill. App. 3d 318, 323-324 (Ill. App. 2nd Dist. 1997). Also, a third party beneficiary if not incidental can have Standing. *Credit General Ins. Co. v. Midwest Indem. Corp.*, 916 F. Supp. 766, 772 (N.D. Ill. 1996). It is also submitted that RICO Standing should not necessarily be defined by State Law since under de novo review general factual allegations will suffice. *Scheidler* at 256. For the foregoing reasons the Petition for a Writ of Certiorari should be granted and the maintaining of the precedent left by the Seventh Circuit clearly reversed upon Briefing and Oral Argument.

VI.

IF NOT REVERSED BY THIS HONORABLE COURT, THE SEVENTH CIRCUIT'S DECISION WILL MAINTAIN CASE LAW PRECEDENT THAT IS AN ABUSE OF DISCRETION WHEN REQUESTING LEAVE TO AMEND.

The Seventh Circuit held that any leave to Amend for the Plaintiffs would be an act of futility. App. 13a-14a. However, the record shows examples of conduct that could be plead beyond the wrongdoing of the Defendants' predicate acts and clear errors by the Seventh Circuit. **Alternatively, the interests of justice should permit the Plaintiff Leave To Amend.** *Banque Worms, S.A. v. Messrs Worm Et Cie*, 681 F. Supp. 241, 245 (S.D.N.Y. 1987). For the foregoing reasons the Petition for a Writ of Certiorari should be granted and the maintaining of the precedent left by the Seventh Circuit clearly reversed upon Briefing and Oral Argument.

CONCLUSION

Clearly, the tolling rules under RICO will become meaningless and there will remain doubt as to the applicable accrual rule preferred by this Honorable Court unless the instant Petition for Certiorari is granted. Clearly, inaccurate legal analysis as to considering the sole ground for Appeal, exceptional error of fact, inaccurate requirements for Standing under RICO, and abuse of discretion as to Leave To Amend will be endorsed unless the instant Petition for Certiorari is granted. For the foregoing reasons the Petition for a Writ of Certiorari should be granted and the maintaining of the precedent left by the Seventh Circuit clearly reversed upon Briefing and Oral Argument which is categorically requested by the Petitioners.

Respectfully submitted,

PAUL DOUGLAS BROWN
ANNAMALAI & BROWN
Attorneys for Petitioners
#11 The Pines Court, Suite E
P.O. Box 411723
Creve Coeur, Missouri 63141
(314) 469-0992

APPENDIX

APPENDIX A — ORDER AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT DATED AND DECIDED JANUARY 4, 2000

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT CHICAGO, ILLINOIS 60604

Argued September 16, 1999
Decided January 4, 2000

Before

Hon. Kenneth F. Ripple, *Circuit Judge*
Hon. Daniel A. Manion, *Circuit Judge*
Hon. Diane P. Wood, *Circuit Judge*

Nos. 99-1201 & 99-1301

Ruth Reeves, Rebecca Brown and Timothy Reeves,

Plaintiffs-Appellants,
Cross-Appellees,

v.

Michael V. Frierdich, Louis I. Mund, Ronald D. Stanley, Arthur W. Morris and Ralph D. Johnson,

Defendants-Appellees,

and

Appendix A

Kenneth Stumpf and Alan Stumpf,

Defendants-Appellees,
Cross-Appellants.

Appeals from the United States District Court
for the Southern District of Illinois,
East St. Louis Division.

No. 98 C 384

David R. Herndon, *Judge.*

ORDER

Ruth Reeves, her grandson Timothy Reeves, and daughter Rebecca Brown, sued various lawyers, accountants, and others under RICO contending that the defendants defrauded them of property and money that was part of the estate of Ruth's husband. The district court dismissed the complaint, concluding that Tim and Rebecca lacked standing to sue, and that Ruth's claims were barred by the statute of limitations. The district court also denied the request for Rule 11 sanctions brought by two of the defendants, Alan and Kenneth Stumpf. The plaintiffs appeal the dismissal of the complaint, and the Stumpfs cross-appeal the denial of their motion for sanctions. Because the complaint's allegations and the documents attached to the complaint make clear that Ruth knew or should have known of her alleged injuries more than four years before she filed suit, we affirm the dismissal of the complaint. We also affirm the district court's denial of sanctions because the court acted within its discretion.

Appendix A

I. FACTS

George Reeves, Jr. died in 1979. At that time, his estate consisted of numerous land holdings in Illinois, Missouri, Arkansas, California, and Nebraska. George's widow, Ruth Reeves, was the estate's executrix. Ruth hired Michael Frierdich as an attorney for the estate. From 1979 until the early 1990's, various holdings of the estate were sold. Ruth claims that she never authorized the sales and that she did not receive the proceeds from the land sales. She further claims that Alan Stumpf, Arthur Morris, and Ronald Stanley, who provided various legal services for the estate, conspired with Frierdich to, without authority, sell the land holdings and withhold the proceeds. Ruth also alleges that Ralph Johnson, the estate's accountant, Louis Mund, who purchased the Columbia Golf Course, and Kenneth Stumpf, who purchased other properties from the estate, joined in this conspiracy.

On May 12, 1998, Ruth, Tim and Rebecca filed a one-count complaint against Frierdich and the other above-named individuals. Later, they filed under RICO a ten-count amended complaint consisting of 146 pages and many exhibits. In Counts I, II and III, the plaintiffs alleged that Frierdich, Morris, the Stumpfs, and Johnson defrauded them of real estate and/or mortgage payments on land held in Land Trusts 4963 and 4838, by selling it to Ken Stumpf without permission, by converting the funds from the unlawful sale and then laundering the money derived from the sale, and by bribing the other defendants for their cooperation and silence. Counts IV, V, and VI contained similar allegations concerning the sale of the Columbia Golf

Course to defendant Mund. And Counts VII, VIII and IX alleged the same fraudulent scheme concerning the sale of West Park Centre, a commercial complex located in Monroe County, Illinois, and Count X included allegations of fraud concerning miscellaneous interstate properties. The defendants moved to dismiss the plaintiffs' complaint. The district court granted the motion, holding that Rebecca Brown and Tim Reeves lacked standing to sue, and that Ruth Reeves' claims were barred by the statute of limitations. The Stumpfs moved for Rule 11 sanctions, but that motion was denied.

II. ANALYSIS

The Supreme Court has held that the statute of limitations governing civil RICO actions is four years. *Agency Holding Corp. v. Malley-Duff & Associations, Inc.*, 483 U.S. 143, 156-57 (1987). The Seventh Circuit has adopted the accrual rule which holds that the four-year period for RICO claims begins to run when the plaintiff knew or should have known that she was injured, "even if she has not yet discovered the pattern of racketeering." *McCool v. Strata Oil Co.*, 972 F.2d 1452, 1464-65 (7th Cir. 1992).[1]

---

1. The Supreme Court has recently granted certiorari to resolve the split among the circuits regarding whether a RICO cause of action accrues upon the discovery of the injury alone, or upon the discovery of both the injury and the pattern of racketeering activity. *Rotella v. Wood*, 147 F.3d 438, 439 (5th Cir. 1998), *cert. granted* 143 L.Ed.2d 207 (1999). In this case, however, as the following analysis makes clear, the difference in rules is irrelevant because not only should Ruth have discovered her alleged injury — she also should have discovered the alleged pattern of racketeering more than four years before she filed suit.

Appendix A

Ruth filed this suit on May 12, 1998. Thus, the question is whether she knew or should have known of her alleged injuries before May 12, 1994. We begin by considering counts I – III which allege that the defendants unlawfully converted portions of land and proceeds from the sales of real estate held in Land Trusts 4963 and 4838. Specifically, Ruth contends that the defendants sold land held in Land Trusts 4963 and 4838 to Kenneth Stumpf on July 13, 1981 and on December 20, 1983, without her permission, and that the defendants converted the proceeds of these sales.

While Ruth argues that she did not discover the fraud and conversion until much later, she attached to her complaint several exhibits which demonstrate that she knew of these alleged injuries more than four years before she filed suit. The first is Exhibit 8, a letter by Michael Frierdich to Ruth dated September 29, 1987, stating: "I am getting ready to receive about $600,000 from the Stumps on the mortgage payment. We need to release the mortgage and then I will be doing another one for $200,000 in its place. Could you please sign the enclosed mortgage release and return it to me as soon as possible so that we can proceed with the transaction." Another letter dated 1991 also referenced the 1983 sale of the property to Kenneth Stumpf. If, as Ruth contends, she did not authorize these sales and did not know that the property was sold to the Stumps, these letters should have put her on notice that such a sale had occurred. While Ruth argues that "[t]here is no indication from the letter that Ruth Reeves should have known the Appellees were not paying her funds for Land Trusts 4932 and 4838," the letter put Ruth on notice in 1987 that she was due funds from these sales, and when she did not receive the money within a reasonable

time she should have investigated further, and certainly should have filed suit to recover the unpaid amounts well before May 12, 1998. With this filing her cause of action would have to have accrued on May 12, 1994 or after. Clearly she was on notice that funds were missing long before that.

The defendants also point to Exhibit 35(B) to Ruth's complaint, dated February 28, 1983 and entitled "Ruth Reeves, Statement of Financial Position." The defendants argue that this financial statement "clearly sets forth as a note receivable payments due with respect to Land Trusts 4838 and 4963, [and that] [s]uch Statement of Financial Position indicated to Ruth Reeves that monies were due from sale of the Land Trusts 4838 and 4963, and through such Statement of Financial Position, Ruth Reeves knew or should have known of the alleged injury to Land Trust 4963 and 4838." However, contrary to the defendants' position, this 1983 financial statement did not list note receivable payments due with respect to Land Trusts 4838 and 4963, but rather listed those Land Trusts as assets at their current market values of $742,219 and $308,000 respectively. Exhibit 6, dated June 30, 1986, however, is a second Statement of Financial Position and that exhibit lists note receivables from Kenneth Stumpf for Trusts 4838 and 4963. Together, these documents demonstrate that Ruth should have known of any conversion, if there was one, long before she filed suit. Because the 1983 Statement of Financial Position listed the Land Trusts as assets, along with their market values, Ruth had notice of these holdings. Thus, when she received the 1986 Statement of Financial Position which listed those Land Trusts as receivables, she had notice of the sales, as well as the value of the receivables stemming from the sales. Ruth

alleged in her complaint that the defendants fraudulently informed her that the mortgages on these land sales were fully paid on September 17, 1992 when she received $205,128.76. She asserts that the property was worth significantly more than this amount and that the sale to Ken Stumpf was fraudulent. Again, assuming this is true, then Ruth should have known of her injury at least by September 17, 1992 because she had notice of the value of the land, the sale, the amount of receivables stemming from the sale, and the dollar amount she eventually received. This was almost six years before she filed suit on the allegedly fraudulent transfer of the land and conversion of the proceeds, and clearly outside the four-year limitation period.

In response, Ruth points to Exhibit 3. Exhibit 3 was a letter dated February 1987 which stated the original principal due on the land sales and which proposed that the Stumpfs accelerate the payments on the notes. The letter proposed payment dates running from March 1, 1987 to March 1, 1996. Ruth claims that because the last payment date was not until March 1, 1996, her claim did not accrue until that date. However, rather than helping Ruth, Exhibit 3 cuts against her position of reasonable ignorance. This 1987 letter made clear that a contract for the sale of property had been made in 1983. Accordingly, notwithstanding Ruth's claim that she did not know of the sale, this letter should have put her on notice of the transfer. Second, the letter informed Ruth that payments were due under the contract beginning on March 1, 1987. If she did not receive these payments, she would have known then of the alleged injury; no reasonable person waits ten years before inquiring as to why semi-annual mortgage payments were not received. Alternatively, when

Ruth received the $200,000-plus in 1992, purportedly in full payment on this property, that should have put her on notice that no further payments were due under Exhibit 3. Because Exhibit 3, together with the other documents attached to her complaint and noted above, establishes that Ruth knew or should have known of her alleged injury much before 1994, the district court properly dismissed Counts I, II, and III as barred by the statute of limitations.[2]

Counts IV, V, and VI pertain to the sale of the Columbia Golf Course and to Lot 7A, which Ruth alleges were sold to Louis Mund without her permission. She also alleges that she never received the proceeds from these sales. Attached to her complaint, however, was a letter from defendant Morris dated March 4, 1993, which states: "since Mr. Mund has complied with his portion of the 'Agreement for Purchase and Sale of Assets' in that he has paid the entire purchase price at closing in March, 1987. . . ." This letter put Ruth on notice that Mund had purchased some property from her and that funds from that property should already have been paid to her. Had she not received the money as stated in the letter, she would have known on that date — March 4, 1993 — that she had suffered an injury. Yet she did not sue for more than five years. Thus, her claims premised on the fraudulent

---

2. Also cutting against Ruth's position is her allegation that she only now could have discovered the single injury (unlawful conversion of certain parts of Trusts 4963 and 4838) because until she received page four of Kenneth Stumpf's affidavit notarized August 7, 1998, she did not discover the sale of those properties. Yet Ruth filed suit in May 1998 — before she received this affidavit. She does not adequately explain why she could not have done so much earlier, namely by 1994.

transfers of the Columbia Golf Course and Lot 7A are also barred by RICO's statute of limitations.

In concluding that these claims were barred, the district court also relied on the contracts for the sale of the Columbia Golf Course and Lot 7A, which bore Ruth's signature and which she attached to the complaint. On appeal, Ruth asserts that her name was forged. The defendants contend that we should ignore Ruth's assertion because it is unsupported by facts, documents or other exhibits. But at this stage she does not need to prove that her signature was forged — merely alleging it is sufficient.[3] Nonetheless, even assuming these contracts were forged, Ruth should have known of the alleged injury well before 1994 based on the March 4, 1993 letter which discussed the two contracts for land sales to Louis Mund. If she did not sign the contracts, she would not have known to what the letter referred and a reasonable person then would have inquired further. Moreover, this letter specified that she had received $400,000 for the sales on or about March 20, 1987, and Exhibit 35B, the Statement of Financial Position, also listed receivables due from these land sales. If Ruth had not agreed to the sales or had not received the proceeds, the Statement of Financial Position and this letter put her on notice that such a sale had taken place and that money was supposedly paid to her. Because she did not sue until more than five years after the letter, the district court properly dismissed Counts IV, V, and VI as barred by the statute of limitations.

---

3. Of course that does not give plaintiffs leave to allege facts they know are false. If that were to happen, other remedies, including sanctions, would be appropriate. But with a 12(b)(6) dismissal, we must assume the plaintiffs' allegations are true.

Appendix A

Counts VII, VIII and IX concerned the allegedly unauthorized sale of the West Park Centre to Ken Stumpf. Specifically, Ruth Reeves alleged that she owned this property pursuant to a warranty deed, but that without her permission it was sold to Ken Stumpf and that she did not receive any of the proceeds. However, the warranty deed under which Ruth allegedly owned this property provided that she would receive the deed to the property in May 1992. If Ruth did not know of the sale to Ken Stumpf and believed that she was the legal owner of the property, she should have sued within four years of May 15, 1992, when she did not receive the deed. Additionally, these sales to Ken Stumpf were publicly recorded in 1987 and 1988, and Ruth attached copies of the deeds to her complaint. Thus, Ruth had constructive notice of the allegedly fraudulent transfer years before she filed suit.

Remaining is Count X. It is unclear the legal claim presented here. In her brief on appeal, Ruth quotes a portion of her amended complaint, and the only fraud mentioned is the "unlawful conversion of the multi-state properties and funds." The district court on the other hand characterized Count X as presenting claims for mail and wire fraud, which it dismissed because the mailings all took place more than four years prior to the filing of Ruth's complaint. The district court also concluded that the telephone calls, while made within four years of the filing of the complaint, merely concerned the alleged cover-ups of the earlier fraud, and thus were not separately actionable. Ruth fails to explain why or how the district court erred in its conclusion that Count X was premised on mail and wire fraud and that those claims were not separately actionable. As we have stated numerous

times, failure to address one of the district court's "holdings results in a waiver of any claim of error with respect to the court's decision on that issue." *Kauthar SDN BHD v. Sternberg*, 149 F.3d 659, 668 (7th Cir. 1998). And in any event, Ruth does not present enough information, much less an adequate legal argument, from which we can review the broadly alleged "unlawful conversion" contained in Count X; rather, she merely argues that she made sufficient allegations of fraudulent concealment, equitable estoppel, equitable tolling and due diligence. Those arguments are considered below, but as to the initial question as to whether the four-year statute of limitations has run on Count X, we must answer in the affirmative because Ruth's briefs fail to present sufficient information to review the district court's analysis. *See Sere v. Board of Trustees of the Univ. of Ill.*, 852 F.2d 285, 287 (7th Cir. 1988) ("It is not the obligation of this court to research and construct the legal arguments open to parties, especially when they are represented by counsel . . . .") (quoting *Sanchez v. Miller*, 792 F.2d 694, 703 (7th Cir. 1986)).

As just noted, Ruth claims that the statute of limitations should be tolled for fraudulent concealment, equitable estoppel or equitable tolling. Equitable estoppel, which is also sometimes referred to as fraudulent concealment, "comes into play if the defendant takes active steps to prevent the plaintiff from suing in time, such as by hiding evidence or promising not to plead the statute of limitations." *Hentosh v. Herman M. Finch University*, 167 F.3d 1170, 1174 (1999). Ruth does not allege that the defendants promised not to plead the statute of limitations, but she does contend that the doctrine applies here because the defendants never

informed her of many transactions, and never revealed where the proceeds of the sales were located. These assertions are insufficient to toll the statute of limitations for two reasons. First, as we have explained in the past, equitable estoppel contemplates wrongdoing above and beyond the wrongdoing upon which the plaintiffs' claim is founded, *Hentosh*, 167 F.3d at 1174, but Ruth's allegations go no further than the fraud alleged in her complaint. Second, given the detailed information Ruth received about the allegedly fraudulent property transfers, and her allegations that she did not receive the proceeds from these sales notwithstanding the defendants' promises that she would be receiving money, it was unreasonable for Ruth to wait until 1994 to file suit. "The 'granting of equitable estoppel should be premised on a defendant's improper conduct as well as a plaintiff's actual and reasonable reliance thereon.' " *Hentosh*, 167 F.3d at 1174 (quoting *Whelldon v. Monon Corp.*, 946 F.2d 533, 537 (7th Cir. 1991)). Because the defendants' alleged improper conduct went no further than the fraud alleged in the first instance, and because Ruth acted unreasonably in relying on letters which stated that transfers (which were allegedly fraudulent) had occurred, she cannot avoid the statute of limitations based on the doctrine of equitable estoppel.

Ruth also asserts that equitable tolling prevents the statute of limitations from running. "Equitable tolling 'permits a plaintiff to avoid the bar of the statute of limitations if despite all due diligence he is unable to obtain vital information bearing on the existence of his claim.' " *Hentosh*, 167 F.3d at 1174. Equitable tolling is available only if a reasonable person exercising due diligence would not have been aware of his claim. However, in this case, Ruth

should have been aware of her claims. In fact, the allegations and exhibits attached to the complaint demonstrate that she not only had notice of the alleged fraud, but also that she had actual knowledge of the fraud: In February 1993, Ruth's accountant mailed her a letter detailing concerns about the dissipation of her assets. In this letter, the accountant repeats Ruth's comment that "something is rotten in Denmark," in reference to her assets and financial affairs. This shows that Ruth was at least suspicious of the alleged problems with her assets in early 1993, yet she did not file suit.

Further, even if Ruth did not actually know of the fraud, the exhibits Ruth attached to her complaint make clear that had she exercised due diligence, she would have learned of the alleged wrongs more than four years prior to her suit. In fact, the only apparent reason for the delay was that Ruth lived out of state, and that she had not reviewed the various financial documents until she moved back north. Mere inconvenience is insufficient to toll the statute of limitations. Because Ruth would have been aware of her claims had she exercised due diligence, equitable tolling does not apply.[4]

Alternatively, Ruth claims that she should be allowed to amend her complaint to allege facts that would support equitable estoppel or equitable tolling. This would do her

4. Ruth also contends that she could not have sued any sooner because damages were speculative. However, for damages to be speculative so as to prevent the running of the statute of limitations, they must be contingent or unascertainable. *See Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 191 (1997). Because any alleged damages in this case were specific and calculable, albeit complicated to calculate, the statute of limitations would not be tolled.

no good, however, because the problem with Ruth's complaint is not that she did not allege enough facts, but that she alleged too many — her allegations and exhibits make clear that with the exercise of due diligence she should have known of her alleged claims more than four years before she filed suit. *See Kauthar*, 149 F.3d at 670 ("if a 'plaintiff pleads facts that show its suit [is] barred by a statute of limitations, it may plead itself out of court under a Rule 12(b)(6) analysis.' ") (quoting *Whirlpool Fin. Corp. v. GN Holdings, Inc.* 67 F.3d 605, 608 (7th Cir. 1995)). Because it would be an act of futility to allow Ruth to amend her complaint, the district court did not abuse its discretion in denying leave. *Hi-Lite Products Company v. American Home Products Corporation*, 11 F.3d 1402, 1411 (7th Cir. 1993) (a denial of leave may be reversed only for an abuse of discretion).

The district court also dismissed the claims brought by Ruth's daughter and grandson, Rebecca Brown and Timothy Reeves, concluding that they lacked standing to sue. To have standing under RICO, a plaintiff must allege a conspiracy "has injured [his] business and/or property interest, . . ." *National Organization for Women, Inc. v. Scheidler*, 510 U.S. 249, 256 (1994). Neither Timothy nor Rebecca allege that they owned the land allegedly sold without Ruth's authority. Nonetheless, they contend that they have a business or property interest because they were third-party beneficiaries to the land contracts; because Ruth, as the executrix, assigned them an interest in the land; and because they are named beneficiaries under Ruth's will. The plaintiffs fail to cite to any case law establishing RICO standing under these circumstances, nor do we find any. Moreover, contrary to

Tim and Rebecca's arguments, at most they are incidental beneficiaries of the land contracts entered into between Ruth and the various parties, and under Illinois law incidental beneficiaries cannot sue for breach of contract. *See Credit General Insurance, Co. v. Midwest Indemnity Corp.*, 916 F. Supp. 766, 771 (N.D. Ill. 1996). And Ruth's purported assignment to Tim and Rebecca gets them nowhere because the assignment was not made until August 1998, after the statute of limitations had run. Thus, there was nothing left for Ruth to assign at that time. Finally, standing cannot possibly be based on being a named beneficiary under a will. That point is so fundamental to the understanding of standing that we are not surprised that no court has ever had to say the obvious. In short, these alleged business or property interests are too remote to confer standing on Tim and Rebecca under RICO.

Finally, we address the issue of sanctions. Before the district court Alan and Kenneth Stumpf moved for Rule 11 sanctions. The district court denied this motion and they cross-appealed. We review a denial of sanctions for an abuse of discretion. We cannot say under the circumstances of this case, namely the complicated nature of this case and the possibility — albeit unsuccessful — of equitable tolling and equitable estoppel, that the district court abused its discretion.

Also pending is the plaintiffs' Rule 38 motion for sanctions. The plaintiffs contend the defendants' cross-appeal from the denial of Rule 11 sanctions was frivolous. An appeal is frivolous when the result is obvious. *Lorentzen v. Anderson Pest Control*, 64 F.3d 327, 331 (7th Cir. 1995) While the Stumpfs lost their cross-appeal, that was due to the

deferential standard of review and nothing more. Under these circumstances, we decline to exercise our discretion to award sanctions. *Id.* Therefore, we deny the plaintiffs' motion for sanctions.

Because the documents attached to Ruth's complaint make clear that she should have known of any alleged injury more than four years before she filed suit, the district court properly dismissed her claims. The district court also correctly dismissed Rebecca and Tim's claims because they lacked standing. And as explained above, sanctions are not warranted. We AFFIRM.

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

JUDGMENT — WITH ORAL ARGUMENT

Date: January 4, 2000

BEFORE: Hononable KENNETH F. RIPPLE, Circuit Judge
Honorable DANIEL A. MANION, Circuit Judge
Honorable DIANE P. WOOD, Circuit Judge

Nos. 99-1201 & 99-1301

RUTH REEVES, REBECCA BROWN
and TIMOTHY REEVES,

Plaintiffs-Appellants,
Cross-Appellees,

v.

MICHAEL V. FRIERDICH, LOUIS I. MUND,
RONALD D. STANLEY, et al.,

Defendants-Appellees,

and

KENNETH STUMPF and ALAN STUMPF,

Defendants-Appellees,
Cross-Appellants.

Appendix A

Appeals from the United States District Court for the
Southern District of Illinois, East St. Louis Division
No. 98 C 384, David R. Herndon, Judge

The judgment of the District Court is AFFIRMED, with costs, in accordance with the decision of this court entered on this date.

APPENDIX B — AMENDED MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS DATED AND FILED JANUARY 7, 1999

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CIVIL ACTION NO. 98-0384-DRH

RUTH REEVES, REBECCA BROWN,
and TIMOTHY REEVES,

Plaintiffs,

v.

MICHAEL V. FRIERDICH, LOUIS I. MUND, RONALD D. STANLEY, ARTHUR W. MORRIS, ALAN STUMPF, KENNETH STUMPF, and RALPH D. JOHNSON

Defendants.

AMENDED
MEMORANDUM AND ORDER

HERNDON, District Judge:

I. INTRODUCTION

Pending before the Court are multiple motions to dismiss filed by the various defendants (Docket Entry Nos. 116, 118, 122, 124, 126, 133), motions for sanctions filed by defendant Mund (Docket Entry No. 128) and defendants Kenneth and

Alan Stumpf (Docket Entry No. 137), a motion by defendant Frierdich to stay discovery (Docket Entry No. 156), a motion by defendant Mund to extend time for responses to plaintiff's discovery (Docket Entry No. 158), a motion by plaintiffs to strike reply brief (Docket Entry No. 161), defendant Stanley's motion to extend time to respond to plaintiff's discovery (Docket Entry No. 167), defendant Johnson's motion to stay discovery (Docket Entry No. 169), plaintiff's motion to amend the complaint by interlineation (Docket Entry No. 176), and plaintiff's motion for reconsideration (Docket Entry No. 177). Ruth Reeves, Timothy Reeves, and Rebecca Brown filed suit in this Court against seven defendants: (1) Michael Frierdich; (2) Louis Mund; (3) Ronald Stanley; (4) Arthur Morris; (5) Alan Stumpf; (6) Kenneth Stumpf; and (7) Ralph Johnson. The complaint alleges that these Defendants conspired in a scheme to defraud Reeves via a series of property sales, leases and other conveyances. Reeves' suit is based on the federal Racketeering Influenced and Corrupt Organizations Act ("RICO"), **18 U.S.C. §1961, *et seq.***

Defendants urge dismissal on various grounds, including: failure to state a RICO cause of action, lack of standing to sue, and failure to file suit within the four-year RICO statute of limitations. The Court addresses the standing issue first.

II. STANDING

The United States Supreme Court has held that, at the pleading stage of a RICO case, an allegation that a conspiracy "has injured the business and/or property interests of

[plaintiffs]" was sufficient to confer standing. ***National Organization for Women, Inc. v. Scheidler*, 510 U.S. 249, 256 (1994)**. The Court finds that Ruth Reeves' allegation that she has a property or business interest in certain land trusts and real property contained in those trusts was sufficient, under ***Scheidler***, to confer standing on her at the pleading stage. However, the Court finds that Rebecca Brown and Timothy Reeves lack standing because they have not alleged a sufficient property or business interest that was injured by the alleged actions of defendants.

Rebecca Brown and Timothy Reeves claim they have standing by reason of: (1) an assignment from Ruth Reeves as executrix of the estate of George Reeves, to herself individually and to Rebecca Brown and Timothy Reeves; (2) their status as third-party beneficiaries of certain contracts for the sale of real estate; and (3) the will of Ruth Reeves.

First, plaintiffs, Rebecca Brown and Timothy Reeves, argue that the assignment gives them standing. Plaintiffs cite no authority and the Court finds none which would allow the former executrix of an estate, which was closed for over ten years, to assign rights which, if any existed, belonged to the estate. On the contrary, once an executrix is removed, she has no authority or rights given her by her status as executrix. ***People ex rel. Peoria County v. Harrigan*, 125 N.E. 903 (Ill. 1919); *In re Estate of Moses*, 300 N.E. 2d 473, 478 (Ill. App. Ct. 1973)**. The Court finds that plaintiffs, Rebecca Brown and Timothy Reeves, do no have standing by virtue of an assignment as alleged.

Second, plaintiffs argue they have standing as third-party beneficiaries of certain contracts for the sale of real estate. The contracts of which plaintiffs claim to be third-party beneficiaries do not identify plaintiffs. Moreover, an indispensable element of a third-party beneficiary theory of recovery is that the documents were intended for the direct benefit of the plaintiffs. ***Credit General Ins. Co v. Midwest Indem. Corp.*, 916 F. Supp. 766, 772 (N.D. Ill. 1996).** Although a contract need not expressly name a third party beneficiary, the Court must examine the intention of the parties from a consideration of the entire contract and the circumstances surrounding the parties at the time of its execution. ***Credit General Ins. Co.*, 916 F. Supp. at 772.** In considering all of the circumstances surrounding the contracts at issue here, the Court finds that the contracts were not intended to be for the direct benefit of plaintiffs Rebecca Brown and Timothy Reeves. Accordingly, they do not have standing in the present case as third-party beneficiaries.

Finally, plaintiffs argue they have standing as beneficiaries of the will of Ruth Reeves. However, Ruth Reeves was still living at the time plaintiffs filed suit. Because Ruth Reeves may amend or revoke her will at any time, any person named therein acquires no rights or status by virtue of the terms of that instrument until her death. See ***In re Estate of Maher*, 606 N.E. 2d 469 51-52 (Ill. App. Ct. 1992).** The Court finds that plaintiffs do not have standing as beneficiaries of the will of Ruth Reeves.

Pursuant to the reasoning cited above, the Court grants defendants' motions to dismiss the claims of Rebecca Brown and Timothy Reeves for lack of standing and denies the same motions as to Ruth Reeves.

Appendix B

III. STATUTE OF LIMITATIONS

The plaintiff filed her complaint on May 12, 1998. The United States Supreme Court has held that the statute of limitations governing civil RICO actions is four years. ***Agency Holding Corp. v. Malley-Duff & Associates, Inc.*, 483 U.S. 143, 156-57 (1987).** In ***McCool v. Strata Oil Co.*, 972 F.2d 1452, 1464-65 (7th cir. 1992)**, the Seventh Circuit clarified when the four-year period begins to run. The Seventh Circuit adopted the "accrual rule." Under this rule, the limitations period begins to run once there was a RICO violation and the plaintiff knew or should have known that she was injured. ***McCool*, 972 F.3d at 1464.**

The Seventh Circuit expressly rejected the "last predicate act" rule. The "last predicate act" rule held that the four-year period begins "when the plaintiff knew or should have known of the last injury or the last predicate act which is part of the same pattern of racketeering activity." ***McCool* at 1464.** In rejecting the "last predicate act" rule, the Seventh Circuit held that "a RICO claim accrues when the plaintiff discovers her injury, even if she has not yet discovered the pattern of racketeering." ***Id.***

The Court in ***McCool*** left open the question whether equitable tolling might "delay the running of the limitations period while a victim diligently investigates the possible existence and extent of a pattern of racketeering. Recently, the Seventh Circuit ruled that, if the alleged RICO predicate acts are fraud, the four-year limitations period "runs from the discovery of the injury *but can be tolled* until the plaintiff has enough information to sue. ***Fujisawa Pharmaceutical***

Appendix B

***Co., Ltd. v. Kapoor*, 115 F.3d 1332, 1338-39 (emph. added) (7th Cir. 1997) (citing *Bontkowski v. First Nat'l Bank of Cicero*, 998 F.2d 459 (7th Cir.), *cert. denied*, 510 U.S. 1012 (1993); *McCool*, 972 F.2d at 1465-66.**

Here, both Reeves and defendants agree that Rico actions are governed by a four-year statute of limitations. However, they disagree as to whether that four-year period has elapsed. Defendants argue that most of the predicate acts alleged in Reeves' complaint occurred from 1979 to 1983, and that plaintiff was well aware or should have been aware of all of her alleged injuries more than four years before she filed the complaint in this case. Plaintiff responds that this Court should not treat each predicate act as a separate injury. Rather, plaintiff argues that the entire liquidation of the estate of George Reeves was a single continuous injury, and that the four-year period has not run because defendants continue to deprive her of the property and because the plaintiff's damages were previously too speculative. Finally, plaintiff argues that, even if the four-year limitations period would act as a bar to the present claims, this Court should find that the limitations period was tolled either by the doctrine of equitable tolling or by the doctrine of fraudulent concealment. Plaintiff cites ***Klehr v. A.O. Smith Corp.*, 117 S. Ct. 1984 (1997).**

In ***Klehr***, the Supreme Court held that RICO plaintiffs could assert a fraudulent concealment claim only if they had been reasonably diligent in trying to discover their civil RICO claims. The doctrine of equitable tolling may apply where the plaintiff is prevented from gaining information that would indicate that the injury was caused by wrongdoing by

Defendant. ***Perlman v. Zell*, 938 F. Supp. 1327, 1335 (N.D. Ill. 1996).**

In this Court's previous order dismissing plaintiff's complaint with leave to refile, this Court, through Judge Riley then-presiding, admonished counsel that it applies the Seventh Circuit rule, announced in ***McCool*, 972 F.2d at 1465**, that a "new cause of action under RICO arises on the occurrence of each separate injury, and a suit to recover for that injury must be brought within the [four-year] limitations period." The fraudulent scheme Reeves charges Defendants with here includes alleged asset conversions and real estate transactions dating back to August 1979. Plaintiff's continued disregard of the Seventh Circuit's holding in ***McCool*** suggests she knows very well the devastating impact the ruling has on her claims. Application of the ***McCool*** "separate accrual" rule to each predicate act leads to the conclusion that all of plaintiff's claims are barred by the four-year RICO statute of limitations.

Despite the fact-specific nature of the statute of limitations inquiries (when plaintiff discovered her injury, when her cause of action accrued, and when the limitations period expired), these issues may be determined as a matter of law if the relevant facts are undisputed and they lead to but one conclusion. ***Horn v. A.O. Smith Corp.*, 50 F.3d 1365, 1370 (7th Cir. 1995).** If the determination turns on the resolution of factual questions, however, the statute of limitations issue must be submitted to a jury after trial. ***Horn*, 50 F.3d at 1370.**

Appendix B

A. COUNTS I, II AND III

Counts I, II, and III allege that plaintiff was defrauded of either real estate or mortgage payments on the real estate contained in Land Trusts 4963 and 4838. Plaintiff also claims that she was unaware of this until 1998. However, Exhibit 8 to the complaint is a 1987 letter to plaintiff informing her that the Stumpfs were about to refinance their mortgage. If plaintiff did not know that the mortgage and the $600,000 payment referred to her sale of property in 1983 to Kenneth Stumpf, the letter should have caused plaintiff to investigate and find out to what the letter referred. Accordingly, the Court finds that the plaintiff knew or reasonably should have known of any alleged fraud at that time.

Further, Exhibits 9 and 10 are deeds publicly recorded in 1988 and 1989. Exhibit 11 is a letter to Ruth Reeves in 1991, referencing the 1983 sale to Kenneth Stumpf. Paragraph 13 of Count III of the complaint alleges that Ruth Reeves was informed that the later mortgage was fully paid when she was paid the sum of $205,128.76, on September 17, 1992. Therefore, if Reeves, despite her knowledge of the mortgage demonstrated by the exhibits, had not collected the other payments, the allegation in Count III of the complaint demonstrates that she had knowledge of that injury by September 17, 1992. Moreover, Exhibit 35(b) is a Statement of Financial Position ("the Statement") dated February 28, 1983. The Statement sets forth as a note receivable payments due with respect to Land Trusts 4838 and 4963. If Reeves was not receiving the payments, which she should have known she was due as early as February 28, 1983, she should have known of the injury with respect to

the land trusts much longer than four years before she filed the Complaint on May 12, 1998.

Accordingly, the Court finds as a matter of law that plaintiff's claims with respect to Counts I, II, and III are barred by the four year statute of limitations applicable to RICO actions.

B. COUNTS IV, V, AND VI

Counts IV, V, and VI pertain to the sale of the Columbia Golf Course, Land Trust Property 5048, and Lot 7A. Once again, Exhibit 35(b), the Statement of Financial Position, gave Ruth Reeves notice on February 28, 1983, that she was due monies, attributable to the sale of the golf course and Land Trust 5048, from defendant Mund. Paragraph XI of Count VI of the Complaint refers to a letter (Exhibit 25) from defendant Johnson to Ruth Reeves dated February 17, 1993, which states that he is distraught that Ruth's assets have evaporated to the current state. Moreover, the letter (Exhibit 25) also quotes Ruth Reeves as saying that something is "rotten in Denmark." The letter demonstrates that Ruth knew or reasonably should have known at least by February 17, 1993, that she had suffered injury as a result of the actions alleged in the Complaint.

Accordingly, the Court finds as a matter of law that plaintiff's claims with respect to Counts IV, V, and VI are barred by the four-year statute of limitations applicable to RICO actions.

Appendix B

C. COUNTS VII, VIII, AND IX

Counts VII, VIII, and IX claim that Ruth Reeves was defrauded out of Westpark real estate allegedly owned by her pursuant to Articles of Agreement for Warranty Deed dated May 15, 1981 (Exhibit 27). First, Ruth Reeves does not allege that she made all of the payments under the agreement so as to entitle her to a deed to the property. Second, the fraudulent actions plaintiff claims related to the property are the execution and public recording of deeds in 1987 and 1988 (Exhibits 28 and 29). Despite plaintiff's claim that she had no duty to keep abreast on the development of claims to her property while living in another state, Illinois law requires a landowner to file any claim relating to real estate within a specified time. The limitations period is seven years with possession and record title (735 ILCS 5/13-107 (West 1996)), seven years with payment of taxes and color of title (735 ILCS 5/13-109 (West 1996)), or twenty years in any event. However, this Court need not determine whether the seven or twenty year limitations period applied under Illinois law. Even assuming it was reasonable for plaintiff to be ignorant of the publicly recorded deeds in 1987 and 1988, plaintiff indisputably knew that she was injured shortly after May 15, 1992 (when the final payment under the Agreement was due), if she did not receive her deed. The Court finds that the plaintiff's claims in Counts VII, VIII and IX are barred by the four-year statute of limitations governing RICO claims.

D. COUNT X

Count X is a series of claims based on mail and wire fraud based on 5 mailings and a three-day series of phone

calls. All of the mailings occurred prior to 1986. The telephone calls occurred within four years of the filing of the complaint. Plaintiff's only allegation of injury with respect to the phone calls is that they served to conceal injuries that took place years before. However, Ruth Reeves' knowledge of these matters more than four years before the filing of the complaint is demonstrated by the exhibits discussed above. Especially damaging to Ruth's claim that these actions continued to conceal the truth from her is Exhibit 25 to her complaint, which references the "something rotten in Denmark" comment made by Ruth in February 1993. Accordingly, the Court finds that the claims in Count X are barred by the statute of limitations.

E. FRAUDULENT CONCEALMENT AND EQUITABLE TOLLING

The Court concludes that neither the doctrine of fraudulent concealment nor the doctrine of equitable tolling served to toll the running of the statute of limitations in the present case. If this Court were to accept Plaintiff's argument that there was a "continuing injury" because defendants continued investing funds from the fraudulent acts and because defendants continued to hide the fraudulent acts, the statute of limitations would be meaningless because it would never expire. Moreover, the Exhibits to plaintiff's complaint demonstrate that any attempt by defendants to conceal the allegedly fraudulent transactions failed more than four years before plaintiff filed this RICO case. Plaintiff has not alleged any action by defendants which would have prevented her from suing in time. Accordingly, plaintiff was not reasonably diligent in pursuing her claims and cannot

rely on the doctrine of fraudulent concealment nor the doctrine of equitable tolling. See **Klehr, 117 S.Ct. at 1993; *Perlman*, 938 F. Supp. at 1335; *Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 450-51 (7th Cir. 1990).**

IV. CONCLUSION

The Court **GRANTS** the motions to dismiss (Docket Entry Nos. 116, 118, 122, 124, 126, 133). The Clerk of the Court is **DIRECTED TO DISMISS WITH PREJUDICE** plaintiffs' amended complaint. Because the Court has found that Rebecca Brown and Timothy Reeves lack standing and all of Ruth Reeves' claims are time barred, the Court need not address the issue whether the amended complaint fails to state a claim. The defendants' motions for sanctions (Docket Entry Nos. 128, 137) are **DENIED**. The remaining pending motions (Docket Entry Nos. 156, 158, 161, 167, 169, 176, 177) are **DENIED AS MOOT**.

IT IS SO ORDERED.

Signed this 7th day of January, 1999, at East St. Louis, Illinois.

s/ David R. Herndon
DAVID R. HERNDON
United States District Judge

APPENDIX C — SECOND AMENDED JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS DATED AND FILED JANUARY 11, 1999

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

CIVIL ACTION NO. 98-0384-DRH

RUTH REEVES, REBECCA BROWN, and TIMOTHY REEVES,

Plaintiffs,

v.

MICHAEL V. FRIERDICH, LOUIS I. MUND, RONALD D. STANLEY, ARTHUR W. MORRIS, ALAN STUMPF, KENNETH STUMPF, and RALPH D. JOHNSON

Defendants.

SECOND AMENDED JUDGMENT IN A CIVIL CASE

IT IS ORDERED AND ADJUDGED that pursuant to the Court's Amended Order of January 7, 1999, judgment is entered in favor of the defendants, **MICHAEL FRIERDICH, LOUIS MUND, RONALD STANLEY, ARTHUR MORRIS, ALAN STUMPF, KENNETH STUMPF, AND RALPH JOHNSON,** and against the plaintiffs **RUTH REEVES, TIMOTHY REEVES, AND**

Appendix C

REBECCA BROWN, and this cause of action is **DISMISSED with prejudice**.

DATED this 11th day of Jan, 1999.

NORBERT G. JAWORSKI,
Clerk

By: s/ Patricia Brown
Deputy Clerk

APPROVED: s/ David R. Herndon
U.S. DISTRICT JUDGE

EOD: 1/12/99

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT DENYING PETITION FOR REHEARING DATED FEBRUARY 17, 2000

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

February 17, 2000

Before

Hon. Kenneth F. Ripple, *Circuit Judge*
Hon. Daniel A. Manion, *Circuit Judge*
Hon. Diane P. Wood, *Circuit Judge*

Nos. 99-1201 & 99-1301

Ruth Reeves, Rebecca Brown and Timothy Reeves,

Plaintiffs-Appellants,
Cross-Appellees,

v.

Michael V. Frierdich, Louis I. Mund,
Ronald D. Stanley, et al.,

Defendants-Appellees,

and

Appendix D

Kenneth Stumpf and Alan Stumpf,

Defendants-Appellees,
Cross-Appellants.

Appeals from the United States District Court
for the Southern District of Illinois.

No. 98 C 384

David R. Herndon, *Judge.*

ORDER

On January 14, 2000 the plaintiffs-appellants, cross-appellees filed a petition for rehearing. All of the judges on the original panel voted to deny the petition. The petition is therefore DENIED.

APPENDIX E — STATUTES AND RULE INVOLVED

Fed. R. Civ. P. 12 (2000)

Rule 12. Defenses and Objections — When and How Presented — By Pleading or Motion—Motion for Judgment on Pleadings

(a) **When Presented.**

(1) Unless a different time is prescribed in a statute of the United States, a defendant shall serve an answer:

(A) within 20 days after being served with the summons and complaint, or

(B) if service of the summons has been timely waived on request under Rule 4(d), within 60 days after the date when the request for waiver was sent, or within 90 days after that date if the defendant was addressed outside any judicial district of the United States.

(2) A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after being served. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs.

(3) The United States or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within 60 days after the service upon

the United States attorney of the pleading in which the claim is asserted.

(4) Unless a different time is fixed by court order, the service of a motion permitted under this rule alters these periods of time as follows:

(A) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) **How Presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense

in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) **Motion for Judgment on the Pleadings.**

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) **Preliminary Hearings.**

The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

Appendix E

(e) **Motion for More Definite Statement.**

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) **Motion to Strike.**

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) **Consolidation of Defenses in Motion.**

A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

Appendix E

(h) **Waiver or Preservation of Certain Defenses.**

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

* * *

Appendix E

18 U.S.C. § 1962 (2000)

UNITED STATES CODE
TITLE 18 — CRIMES AND CRIMINAL PROCEDURE
CHAPTER 96 — RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

SEC. 1962. Prohibited Activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, Title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

* * *

18 U.S.C. § 1341 (2000)

UNITED STATES CODE
TITLE 18 — CRIMES AND CRIMINAL PROCEDURE
CHAPTER 63 — MAIL FRAUD

SEC. 1341. Frauds and swindles.

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful

use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

* * *

18 U.S.C. § 1343 (2000)

UNITED STATES CODE
TITLE 18 — CRIMES AND CRIMINAL PROCEDURE
CHAPTER 63 — MAIL FRAUD

SEC. 1343. Fraud by wire, radio, or television.

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or

promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

* * *

15 U.S.C. § 15 (2000)

UNITED STATES CODE
TITLE 15 — COMMERCE AND TRADE
CHAPTER 1 — MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE

SEC. 15. Suits by persons injured

(a) Amount of recovery; prejudgment interest

Except as provided in subsection (b) of this section, any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. The court may award under this section, pursuant to a motion by such person promptly made, simple interest on actual damages for the

period beginning on the date of service of such person's pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only —

(1) whether such person or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay, or otherwise acted in bad faith;

(2) whether, in the course of the action involved, such person or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and

(3) whether such person or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

(b) Amount of damages payable to foreign states and instrumentalities of foreign states

(1) Except as provided in paragraph (2), any person who is a foreign state may not recover under subsection (a) of this section an amount in excess of the actual damages sustained by it and the cost of suit, including a reasonable attorney's fee.

(2) Paragraph (1) shall not apply to a foreign state if —

(A) such foreign state would be denied, under section 1605(a)(2) of title 28, immunity in a case in which the action is based upon a commercial activity, or an act, that is the subject matter of its claim under this section;

(B) such foreign state waives all defenses based upon or arising out of its status as a foreign state, to any claims brought against it in the same action;

(C) such foreign state engages primarily in commercial activities; and

(D) such foreign state does not function, with respect to the commercial activity, or the act, that is the subject matter of its claim under this section as a procurement entity for itself or for another foreign state.

(c) Definitions

For purposes of this section —

(1) the term "commercial activity" shall have the meaning given it in section 1603(d) of Title 28, and

(2) the term "foreign state" shall have the meaning given it in section 1603(a) of Title 28.

* * * *

APPENDIX F — EXHIBIT 3 ATTACHED TO AMENDED COMPLAINT, LETTER FROM EUGENE J. SCHORB, C.P.A., P.C. TO S & S LAND TRUST DATED FEBRUARY 16, 1987

EUGENE J. SCHORB, C.P.A., P.C.
CERTIFIED PUBLIC ACCOUNTANT
A PROFESSIONAL CORPORATION
518 NORTH MAIN STREET
COLUMBIA, ILLINOIS 62236
618-281-5195

* * *

February 16, 1987

S & S Land Trust, A Partnership
Rural Route #1
Columbia, Illinois 62236

We have reviewed the possibility of a prepayment to Ruth S. Reeves of the principal amount due on the contract entered into in 1983. For review, we have scheduled the payments through March 1, 1996 in accordance with the contract.

ORIGINAL PRINCIPAL $905,350.73

CURRENT CONTRACT:

Date	Interest	Principal	Remaining Balance	Rate of Interest
March 1, 1987	$ 36,214.03	$ —	905,350.73	8.00%
Sept. 1, 1987	36,214.03	—	905,350.73	8.00%
March 1, 1988	36,214.03	13,580.26	891,770.47	8.00%

Appendix F

Sept. 1, 1988	35,670.82	13,376.56	878,393.91	8.00%
March 1, 1989	35,135.76	13,175.91	865,218.00	8.00%
Sept. 1, 1989	36,771.77	12,978.27	852,239.73	8.50%
March 1, 1990	36,220.19	12,783.60	839,456.14	8.50%
Sept. 1, 1990	35,676.89	12,592.84	826,864.30	8.50%
March 1, 1991	35,141.73	12,402.96	814,461.33	8.50%
Sept. 1, 1991	34,614.61	12,216.92	802,244.41	8.50%
March 1, 1992	34,095.39	12,033.67	790,210.74	8.50%
Sept. 1, 1992	33,583.96	11,853.16	778,357.58	8.50%
March 1, 1993	33,080.20	11,675.36	766,682.22	8.50%
Sept. 1, 1993	32,583.99	11,500.23	755,181.99	8.50%
March 1, 1994	32,095.23	11,327.73	743,854.26	8.50%
Sept. 1, 1994	33,473.44	11,157.81	732,696.44	9.00%
March 1, 1995	32,971.34	10,990.45	721,706.00	9.00%
Sept. 1, 1995	32,476.77	10,825.59	710,880.41	9.00%
March 1, 1996	31,989.62	710,880.41	(.00)	9.00%
	$654,223.80	$905,350.73		

TOTAL PAYMENTS $1,559,574.53

Using this as a basis, we drafted projected scheduled payments on a purchase price adjustment to $750,000. Following is a review of the loan terms we recently discussed.

i. Commercial lending would be at 9.5% for a three year period of time.

ii. An increase of two percent (2%) would be possible at the time of the renewal of the note, being every third year.

Appendix F

iii. The payments would remain on a semi-annual basis.

iv. Principal payments are what is necessary to amortize the loan over a twenty-year life, a pattern often used by lending institutions.

ORIGINAL PRINCIPAL $750,000.00

SEMI-ANNUAL PAYMENT AS IF LOAN WAS AMORTIZED OVER 20 YEARS

Date	Interest	Principal	Remaining Balance	Rate of Interest
March 1, 1987	$ 36,214.03	$ —	905,350.73	8.00%
Sept. 1, 1987	35,625.00	6,322.08	743,677.92	9.50%
March 1, 1988	35,324.70	6,622.38	737,055.54	9.50%
Sept. 1, 1988	35,010.14	6,936.94	730,118.60	9.50%
March 1, 1989	34,680.63	7,266.45	722,852.15	9.50%
Sept. 1, 1989	34,335.48	7,611.60	715,240.55	9.50%
March 1, 1990	33,973.93	7,973.15	707,267.40	9.50%
Sept. 1, 1990	40,667.88	6,778.56	700,488.83	11.50%
March 1, 1991	40,278.11	7,168.33	693,320.50	11.50%
Sept. 1, 1991	39,865.93	7,580.51	685,739.99	11.50%
March 1, 1992	39,430.05	8,016.39	677,723.60	11.50%
Sept. 1, 1992	38,969.11	8,477.33	669,246.26	11.50%
March 1, 1993	38,481.66	8,964.78	660,281.48	11.50%
Sept. 1, 1993	44,569.00	8,030.60	652,250.88	13.50%
March 1, 1994	44,026.93	8,572.67	643,678.22	13.50%
Sept. 1, 1994	43,448.28	9,151.32	634,526.90	13.50%
March 1, 1995	42,830.57	9,769.03	624,757.86	13.50%

Appendix F

Sept. 1, 1995	42,171.16	10,428.44	614,329.42	13.50%
March 1, 1996	41,467.24	614,329.44	.00	13.50%
	$741,369.83	$750,000.00		

TOTAL PAYMENTS $1,491,369.83

The savings to you based on these simple mathematical calculations would be $68,204.70. ($1,559,574.53 less $1,491,369.83)

There are, however, numerous other considerations which need to be reviewed.

1. The payment schedules made a part of this letter only go through March 1, 1996 inasmuch as this is what the forms of the original contract called for.

2. There will be a decrease in interest deduction of $87,146.03 under the projected payment schedule.

Lost tax deduction for interest paid	$ 87,146
*Multiplied by tax rate	30.5%
Income tax increase	$ 26,580

*Using maximum federal income tax rate in 1988 of 28.% and 2.5% for Illinois income taxes.

Appendix F

3. The purchase price adjustment of $155,351, ($905,331 less $750,000) will be used to reduce your basis in depreciable tangible property by $155,351 thereby reducing your depreciation expense for tax purposes by that amount over time. This would then result in an income tax increase.

Lost tax deduction for depreciation	$155,351
Multiplied by tax rate	30.5%
Income tax increase	$ 47,382

4. We have not clouded the picture by using present values inasmuch as you can readily see that this would be an advantage to you through 1992. That is to say, the interest and principal payments through 1992 would be less under the projected schedule at which time this reverses itself.

5. Although we have discussed your lending the monies at current market rates and terms, we do not believe that an institution would provide you with these provisions on a loan of this size. It may be that the lending institution would require that interest be paid at a rate based on the prime rate adjusted on a periodical basis.

6. There would be a significant savings in interest to be paid under a new contract if there would

be monthly payments as opposed to semi-annual payments. Of course, we realize that farming does not provide for consistent cash flow on a monthly basis.

If you have any questions concerning any of the aforementioned information, please do not hesitate to contact us immediately.

Yours very truly,

EUGENE J. SCHORB, C.P.A., P.C.

By: s/ Keith G. Brinkmann
Keith G. Brinkmann, C.P.A.

KGB/eb

APPENDIX G — EXHIBIT 4 ATTACHED TO AMENDED COMPLAINT, MORTGAGE NOTE DATED OCTOBER 15, 1987

MORTGAGE NOTE

FOR VALUE RECEIVED, the undersigned hereby promise to pay to Ruth S. Reeves, her heirs, successors and assigns, hereinafter referred to as "Seller", at Columbia, Monroe County, Illinois, the principal sum of TWO HUNDRED THOUSAND DOLLARS ($200,000.00), together with interest on the unpaid balance from time to time as hereinafter set forth.

Said principal and interest shall be payable as follows:

1. Interest shall accrue from date hereof at the rate of six percent (6%) per annum until maturity, on March 4, 1994.

2. Interest shall be payable semi-annually with the first such interest payment due six (6) months from date hereof, and subsequent payments of interest due every six (6) months thereafter.

3. Total principal due hereunder shall be due and payable on or before March 1, 1994.

4. This note is secured by a second mortgage bearing even date herewith to the undersigned on real estate located in the County of Monroe and State of Illinois. All the terms and conditions of said mortgage are hereby incorporated in and made a part of this note.

The undersigned further agree that upon default in payment of any of said installments, the undersigned, at the

election of the "Seller" shall pay interest at twelve percentum (12%) per annum so long as said default shall continue and that if default is made in the payment of any of the said installments or in case of breach of any of the covenants or agreements stipulated in said mortgage due to be performed by the undersigned, the principal sum above mentioned or any balance that may be unpaid thereon, together with all interest thereon as aforesaid, and any advances made by the "Seller" shall, at the option of the "Seller", its successors or assigns, become immediately due and payable without notice, and all of said principal, interest and advances, together with interest thereon at a rate of twelve percentum (12%) per annum shall be collectable immediately, or at any time after such default, anything herein before contained to the contrary notwithstanding.

In the event default is made with respect to any of the terms of this note, and this note is placed in the hands of an attorney for collection, or suit is brought on the same, then a reasonable sum for attorneys' fees shall be added to the amount due hereunder, which the undersigned agrees to pay, together with all other costs for collection.

The undersigned further agree that the "Seller" may collect a delinquency and collection charge on each semi-annual installment in default for a period of not less than thirty (30) days in an amount not exceeding five percent (5%) of the installment or five hundred dollars ($500.00), whichever is less, to cover the extra expense involved in handling delinquent payments.

To further secure the payment of this note, the undersigned hereby authorize, irrevocably, any attorney of

any Court of record to appear for the undersigned, in such Court, in term time or vacation, at any time after default, and confess a judgment jointly and severally, without process, in favor of the "Seller", their successors or assigns, for the unpaid balance of the principal and interest exclusive of other advances, together with costs and reasonable attorneys' fees, and to waive and release all errors which may intervene in any such proceeding and consent to immediate execution on such judgment; hereby ratifying and confirming all that the undersigneds' said attorney may do by virtue hereof. The provisions of this paragraph, however, shall be known void if this transaction is a consumer transaction as defined by statute of the State of Illinois.

The makers, sureties, guarantors, and endorsers of this note, jointly and severally, hereby waive notice and consent to any and all extensions of this note or any part thereof without notice, and each hereby waives demand, presentment for payment, notice of non-payment and protect, and any and all notice of whatever kind or nature and the exhaustion of legal remedies herein. Notwithstanding payment provisions above set forth, under circumstances wherein the undersigned would receive less than fifty (50) percent crop on real estate which is the subject matter of this mortgage and more, due to loss caused by flood or other disaster, payments required to be made in that particular year may be carried forward over the next succeeding five (5) calendar years in equal twenty (20) percent installments together with interest on those amounts at the same rate as provided for herein relative to principal amount due hereunder. Determination as to percentage of crop loss shall be based upon three year average crop production on mortgage premises.

Appendix G

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals this 15 day of October, A.D. 1987.

S & S Land Trust

By: s/ Kenneth W. Stumpf, Trustee
Kenneth W. Stumpf (Trustee)

s/ Gary A. Stumpf, Trustee
Gary A. Stumpf (Trustee)

s/ Kenneth Stumpf
Kenneth Stumpf

s/ Gary Stumpf
Gary Stumpf

s/ Evelyn Stumpf
Evelyn Stumpf

s/ Leona Stumpf
Leona Stumpf

Mailing Address:

Kenneth Stumpf
R.R.#1, Box 177
Columbia, IL 62236

Phone Number:
(618) 281-4942

Prepared by:
Frierdich, Lopinot, Buser & Morris
Attorneys at Law
108 Edelweiss Road
P. O. Box 150
Columbia, Illinois 62236-0150
(618) 218-4134

APPENDIX H — EXHIBIT 24 ATTACHED TO AMENDED COMPLAINT, LETTER FROM TRAUGHBER, REITZ & MORRIS, LTD. TO RUTH REEVES DATED MARCH 4, 1993

LAW OFFICE OF
TRAUGHBER, REITZ & MORRIS, LTD.
BREIDECKER PLACE
217 SOUTH MAIN STREET
P.O. BOX 270
COLUMBIA, ILLINOIS 62236

* * *

March 4, 1993

Mrs. Ruth Reeves
121 Del Rio Blvd.
Boca Raton, Florida 33432

Re: Agreement for Purchase and Sale of Assets
dated April 1, 1982
Illinois State Trust Company and Ruth Reeves —
Louis Mund

Dear Mrs. Reeves:

Please be advised that my office represents Transamerica Title Insurance Company and Louis Mund regarding a certain parcel of property which was included in an Agreement for Purchase and Sale of Assets between yourself, Illinois State Trust Company and Louis I. Mund. Apparently, on April 1, 1982 you and Illinois State Trust Company entered into an Agreement for Purchase and Sale of Assets with Louis Mund. I have enclosed a copy of the Agreement for your review. Under the terms of the Agreement, yourself and Illinois State

Appendix H

Trust Company agreed to transfer certain real estate which you had an interest in to Louis Mund for the total sum of $400,000.00. Pursuant to the information I have received, all payments were made and this matter was closed on or about March 20, 1987 at First National Bank in Columbia, Illinois. At that time Illinois State Trust Company (Magna Trust Company) transferred all their interest to Mr. Mund in accordance with the terms and provisions of the Agreement for Purchase and Sale of Assets.

Apparently, there was a separate piece of property titled in your name, individually which was also a part of the Agreement for Purchase and Sale of Assets dated April 1, 1982 which was not transferred at that time. Since Mr. Mund has complied with his portion of the Agreement for Purchase and Sale of Assets, in that he has paid the entire purchase price at closing in March, 1987, I hereby request that in accordance with the terms and provisions of the Agreement that you execute a quitclaim deed transferring your interest in the remaining parcel of property to Mr. Mund. Accordingly, I have prepared a quitclaim deed from yourself to Mr. Mund and his current partner, Ronald D. Stanley, with regard to the piece of property involved.

Your prompt attention to this matter would be very much appreciated. If you have any questions regarding this matter, please don't hesitate to contact me.

Very truly yours,

s/ Arthur W. Morris
Arthur W. Morris

AWM/sc
Enc.

APPENDIX I — EXHIBIT 25 ATTACHED TO AMENDED COMPLAINT, LETTER FROM RALPH D. JOHNSON, E.A., ATA TO RUTH REEVES DATED FEBRUARY 17, 1993

ACCOUNTING SERVICES
RALPH D. JOHNSON. E.A., ATA

* * *

2004 State Street, Alton, Illinois 62002
FAX (314) 231-3315 Phone (618) 465-1919

5494 Brown Road, Suite 105, Hazelwood, Missouri 63042
FAX (314) 731-5230 Phone (314) 731-5500

February 17, 1993

Ruth Reeves
RR 3, Box 539B
Branchville, NJ 07826

Dear Ruth:

I was stung by your comment "there's something rotten in Denmark here" and did not sleep much last night.

I shall divide my comments into two categories:

Ruth Reeves

1. I am distraught that your assets have evaporated to the current state.

Appendix 1

a. The lack of response from the institutions that we requested documentation has been very minimal and disappointing.

   I've been in a time bind (explained later) and can't seem to "get around" to sending 2nd requests.

b. The thought of the dissipated assets has made me "mentally blue" everytime I think of the mess.

II. I've stated to you that I'm upset that this mess happened and I was unaware of it.

   I wish I had called you when Mike made the comment "Ruth is sure spending a lot of money, but its hers". I was surprised but did nothing to investigate what was taking place.

III. I've also stated to you that I made an attempt to recommend placing a portion of the cash from large payment into a very safe and conservative annuity with Franklin Life (an A+ superior rated company) Mike stated "you wanted something that was more aggressive with higher earnings. (Fall 1986)

   At that point, I really felt "out of the loop" (as George Bush has said) I know the "Will" specifically granted Mike broad powers.

Appendix I

IV. Attorneys have "widely" looked down upon accountants as just the numbers people and not on the same professional level.

V. Mike might have been aware that I attempted, (on several occasions) to introduce George to one of the top five estate lawyers — John Farrell in Alton — a former IRS estates auditor while working his way thru night law school.

Why didn't I try harder? I can only say that accountant/advisers can only recommend and advise. George was successful and wealthy — I felt he was in control.

George did ask that I use John on a dirt sale when I came to Florida in March 1979. I felt that was a breakthrough — then he got sick.

Ralph Johnson — Business/Personal

1. I found it necessary to terminate a 19 year executive and his assistant in September 1992.

2. I've found out how much more he "dropped the ball" than I first believed.

   I'm upset with myself for not taking action sooner.

3. My new staff members are working out great but it takes time, energy and patients. I don't seem to have any of those ingredients right now.

Appendix I

4. 1992 has brought about more business difficulties for small business, thus, we're now doing Chapter 11 accounting (for the 1st time in 28 years).

   The negative nature of this work (even though my staff physically does the accounting work) is mentally draining to me because of the complex process (I guess).

5. I have two other widows (within the past 1 1/2 years).

   One estate has its own legal problem with a major contract. More negative conversations.

6. Personally, my parents now require more from me. (I have no siblings). My mother has skin and lung cancer and a broken hip. She has been moved from an out of town hospital to one near me for radiation treatments — I guess I wonder why do it at age 82? 1 can handle this — we all know its coming — its just that the timing couldn't be worse physically and mentally.

7. My doctor says I have "battle fatigue" and he can bring me "out of it" if I give him 3-4 months. In the meantime, tax season didn't get postponed.

Ruth, I felt it necessary to put on paper the confusion going on within me. I'm simply overwhelmed with all the problems everywhere.

Appendix I

I need you help in allowing me to battle through tax season with my new crew. I will bring Gant Harper, CPA into the program and together he and I will complete the mission if we can ever obtain the proper information.

In closing, I trust you will understand my dilemma.

Respectfully submitted,

s/ Ralph D. Johnson

Supreme Court, U.S.
FILED
MAY 16 2000
CLERK

(2)

No. 99-1678

In The

Supreme Court of the United States

RUTH REEVES, REBECCA BROWN AND TIMOTHY REEVES,

Petitioners,

v.

KENNETH STUMPF, ALAN STUMPF, MICHAEL V. FRIERDICH, LOUIS I. MUND, RONALD STANLEY, ARTHUR MORRIS AND RALPH JOHNSON,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF IN OPPOSITION OF KENNETH STUMPF AND ALAN STUMPF

FLOYD E. CROWDER*
TIMOTHY A. GUTKNECHT
CROWDER & SCOGGINS, LTD.
121 West Legion Avenue
P.O. Box 167
Columbia, Illinois 62236
(618) 281-7111

Counsel for Respondents Kenneth Stumpf and Alan Stumpf

* *Counsel of Record*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

12pp

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES i

ARGUMENT 1

I. REASONS FOR DENYING THE WRIT 1

A. The Petition Raises no Rule 10 Issues..... 1

B. The Seventh Circuit's Decision is *not* Precedent..... 2

C. The Seventh Circuit's Decision was Correct .. 3

II. MISSTATEMENTS OF FACT 4

A. Petitioners' "Facts" are One-Sided 4

B. Statements Outside of the Record..... 5

CONCLUSION 9

TABLE OF AUTHORITIES

CASES

Reeves v. Frierdich, Nos. 99-1201 & 99-1301, slip op. (7th Cir. 2000)..... 3

ARGUMENT

I. REASONS FOR DENYING THE WRIT.

There is no compelling reason for this Court to review the *per curiam* ruling of the Seventh Circuit affirming the dismissal of Petitioners' lawsuit. The Petition does not raise any issues identified by the Court in Rule 10 as worthy of consideration. Further, Petitioners' claim, that the Seventh Circuit decision will "maintain" bad precedent, is without merit for the reason that **the decision of the Seventh Circuit is an unpublished Order not to be cited pursuant to Circuit Rule 53.** Finally, the decision of the Seventh Circuit was proper in all respects other than the affirmance of the trial court's denial of Respondents' Motion for Sanctions (for which no further appeal has been sought). Respondents respectfully urge this Honorable Court to deny the Petition for Writ of Certiorari.

A. The Petition Raises no Rule 10 Issues.

Supreme Court Rule 10 lists three categories of issues worthy of the Court's consideration. The Petition filed in this cause does not attempt to frame the Questions Presented in order to raise any issues described in Rule 10, nor are any such issues present in the Seventh Circuit's *per curiam* decision. The appellate decision in this case does not conflict with the decisions of any other circuits, does not conflict with the decision of any state court of last resort and does not in any way depart from the accepted and usual course of judicial proceedings. The appellate decision was rendered by a federal court, not a state court. Further, as is evident from the failure of the appellate court to publish its decision, there were no

important federal questions involved in the decision. Finally, the Seventh Circuit's opinion comports with all relevant Supreme Court precedent. Nothing about this case suggests a level of importance sufficient to warrant the Court's attention.

Rule 10 also states that, "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." As is evident from the text of the Seventh Circuit's decision and of the Questions Presented, Petitioners' claims on appeal are merely alleged misapplications of properly stated rules of law to the "facts" as they purport them to be. Petitioners cannot argue that the four-year statute of limitations for a RICO civil action was incorrect, they can only argue that the limitation was applied incorrectly to the facts of the case as contained in the exhibits to the Amended Complaint. Thus, this is the type of case which, according to Rule 10, this Court is not interested in hearing.

B. The Seventh Circuit's Decision is *not* Precedent.

Each of Petitioners' arguments is urged upon this Court so that, according to Petitioners, bad case law will not be "maintained". Petitioners' Conclusion warns of the dire consequences of permitting the Seventh Circuit's decision to stand: "Clearly, the tolling rules under RICO will become meaningless and there will remain doubt as to the applicable accrual rule." **These arguments are meritless. The decision of the Seventh Circuit is an unpublished Order not to be cited pursuant to Circuit**

Rule 53.[1] Assuming, *arguendo*, that the Seventh Circuit's decision was erroneous, there is no way the decision can affect the outcome of any other case since it may not be used as precedent under Circuit Rule. Further appellate review will have an effect on only one case: Petitioners'. This case is not like some cases where the outcome affects thousands or millions of persons.

C. The Seventh Circuit's Decision was Correct.

The Seventh Circuit's decision requires no review for the reason that it is well-reasoned and the conclusions therein conform to the law in all respects. The trial court and the appellate court correctly identified insurmountable problems relating to limitations and standing issues in the Amended Complaint: **"The documents attached to [the Amended Complaint] make clear that [Plaintiff] should have known of any alleged injury more than four years before she filed suit."** *Reeves v. Frierdich*, Nos. 99-1201 & 99-1301, slip op. at 9 (7th Cir. 2000).

Petitioners had two chances to state their claims and gave the trial court no justification for a third opportunity. This lawsuit was just one in a series of frivolous suits brought by these plaintiffs. The litigation started in 1994 with a malpractice action against Respondent Michael Frierdich that Petitioner Ruth Reeves voluntarily dismissed in 1997 when summary judgment was looming. The litigation continued with this case and then with

---

[1] Curiously, this notation, found on page one of the Seventh Circuit's Order and Judgment, is absent from page one of the Order and Judgment reproduced in Petitioners' Appendix.

frivolous claims filed by Petitioners in a state court action involving Respondent Kenneth Stumpf and others. Petitioners should be given no further federal opportunity to cause unnecessary expense and aggravation to Respondents, and the Petition for Writ of Certiorari should be denied.

II. MISSTATEMENTS OF FACT.

Supreme Court Rule 15 obligates Respondents to address any misstatements of fact contained within the Petition for Writ of Certiorari. In this case, the Petition is replete with misstatements of "fact".

A. Petitioners' "Facts" are One-Sided.

The record on appeal is devoid of the usual "facts" for the reason that this cause was dismissed prior to the filing of answers by any of the defendants. The decisions of the trial and appellate courts were based on the unanswered allegations in the Amended Complaint and the 127 pages of exhibits attached thereto. While the Complaint and Amended Complaint were successfully attacked for their failure to state recognizable and non-time-barred claims, Defendants wish to assure the Court that the failure of Respondents to attack the Complaint and Amended Complaint on the merits was entirely the result of having obtained relief at the pleading stage and not because such a defense on the merits would not have succeeded. On the contrary, it is Respondents' position that virtually all of the allegations in the Complaint and the Amended Complaint were products of a vivid imagination and a failure to take into account indisputable

evidence that Respondents were innocent of the charges leveled against them.

B. Statements Outside of the Record.

Despite the advantage of limiting the "facts" to the unanswered allegations contained in the Amended Complaint and the 127 pages of exhibits attached thereto, Petitioners seem compelled to **add** to those "facts" with each additional pleading filed. Their Petition for Writ of Certiorari is no exception. The following is a list of some of the more egregious misstatements in the Petition:

Page 3

Petitioners allege that S & S Land Trust bought real estate in 1981 from Michael Frierdich that was owned by Petitioner Ruth Reeves. **This is not true.** The property Petitioners sought to recover in Counts I, II and III was purchased from the Illinois State Trust Company as stated in Exhibit 7 to the Amended Complaint.

Petitioners allege that Respondent Alan Stumpf is a former attorney for Petitioner Ruth Reeves. **This is not true.** The Amended Complaint alleges that Mr. Stumpf was "perceived" by Reeves to be her attorney. None of the exhibits confirm this and they show that he actually represented Respondent Kenneth Stumpf in some of his dealings with Reeves.

Petitioners allege that Frierdich assigned a mortgage note from Reeves to a bank for $200,000 when more than $900,000 was owed. Petitioners then allege forgeries of several related documents on pages 3 and 4. **None of this is alleged in the Amended Complaint nor is it found in**

the exhibits thereto. Through these allegations, Petitioners are attempting to prejudice the Court with the slanderous allegations from a different lawsuit that are not part of the record for this appeal and should be stricken.

Page 4.[2]

Petitioners allege that Respondent Kenneth Stumpf can only prove $316,000 in payments for property purchased for $1.6 million. **This is both false and outside of the record for this attempted appeal.** Neither in this cause nor in any other lawsuit has Mr. Stumpf undertaken to present proof of full payment for the property in question. The affidavit to which Petitioners refer contained copies of checks merely by way of example and not as a full showing of all of the proof available to disprove Petitioners' frivolous claims. But this is all irrelevant to this attempted appeal because these matters are not included in the Amended Complaint and the 127 pages of exhibits attached thereto.

Petitioners refer to an affidavit of Petitioner Ruth Reeves wherein she swears she never received millions of dollars in checks made out to her. **This affidavit is from a different lawsuit and is not part of the record for this attempted appeal.**

---

[2] Respondents Kenneth Stumpf and Alan Stumpf do not address the allegations on pages 4 and 5 relating to Counts IV, V and VI for the reason that said Respondents are not named in those counts.

Page 5.

Petitioners allege that Frierdich arranged the sale of a commercial shopping center to Petitioner Ruth Reeves and then sold it to himself several years later. **This is not true.** The Amended Complaint does not allege that a shopping center was sold, but that real estate was sold. The shopping center wasn't built until well after the alleged transaction and was merely farm ground at the time of the alleged transaction. Further, the exhibits to the Amended Complaint only show an executory contract for the purchase of real estate. **Neither the Amended Complaint nor the exhibits attached thereto allege or show that Reeves ever performed under the contract or held title to the property she now alleges was stolen from her.**

Page 7.

The entire first paragraph of the "Procedural History" section relates to a different lawsuit and is not part of the allegations found in the Amended Complaint and the 127 pages of exhibits attached thereto, and thus, is not part of the record for this attempted appeal.

Most of the second paragraph of the "Procedural History" section relates to a different lawsuit and is not part of the allegations found in the Amended Complaint and the 127 pages of exhibits attached thereto, and thus, is not part of the record for this attempted appeal.

Pages 13-14.

Petitioners argue that the Seventh Circuit erred in assuming that Petitioner Ruth Reeves saw the 1987 CPA letter (Exhibit 3) by which she was found to have been

put on notice of alleged RICO injuries, and they allege that she did not, in fact, see the letter. **This is absurd.** Counts I, II and III of the Amended Complaint are based on a purported contract with Reeves, and Petitioners attached Exhibit 3 to the Amended Complaint as the only writing they had evidencing the purported contract that Reeves claims to have entered into. **How could they base their contractual claim on the letter in the trial court and now allege to this Court that they had no knowledge of the same letter or the information contained therein?** Such an allegation represents a misstatement designed to create an "exceptional factual error" on the part of the Seventh Circuit where there was none made.

Page 15.

Petitioners allege that the Seventh Circuit has "dismissed" predicate acts occurring within four years of the filing of the lawsuit. **This is not true.** Neither the trial court nor the appellate court "dismissed" any "predicates". What has been properly dismissed are causes of action alleging injuries that all occurred five to twenty years prior to the filing of the lawsuit.

Page 19.

Petitioners allege that Reeves held title to Westpark Center by warranty deed. **This is not true.** Exhibit 27 to the Amended Complaint was merely an executory Agreement for Warranty Deed. **Neither the Amended Complaint nor the exhibits attached thereto allege or show that Reeves ever performed under the contract or held title to the property that she now alleges was stolen from her.**

Page 22.

Petitioners allege that the trial court made no determination with respect to their allegations of fraudulent concealment, equitable estoppel, equitable tolling and due diligence. **This is not true.** The trial court explicitly considered and rejected these claims on pages 10 and 11 of the Amended Memorandum and Order dated January 7, 1999, stating:

> The Exhibits to plaintiff's complaint demonstrate that any attempt by defendants to conceal the allegedly fraudulent transactions failed more than four years before plaintiff filed this RICO case. Plaintiff has not alleged any action by defendants which would have prevented her from suing in time. Accordingly, plaintiff was not reasonably diligent in pursuing her claims and cannot rely on the doctrine of fraudulent concealment nor the doctrine of equitable tolling.

CONCLUSION

A discussion of the relevant law and the application of that law to the facts of this case is not called for at this time, and no attempt has been made to do so. This Brief is intended to address misstatements and to point out why a writ of certiorari should not be granted.

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

FLOYD E. CROWDER*
TIMOTHY A. GUTKNECHT
CROWDER & SCOGGINS, LTD.
121 West Legion Avenue
P.O. Box 167
Columbia, Illinois 62236
(618) 281-7111

Counsel for Respondents Kenneth Stumpf and Alan Stumpf

* *Counsel of Record*